

CONSTRUCTIONS

BY THE

COURTS OF SUDDER DEWANNY & NIZAMUT ADAWIUT

OF THE

REGULATIONS AND LAWS,

FOR

THE CIVIL GOVERNMENT

OF

The whole of the Territories under the Presidency

OF

FORT WILLIAM IN BENGAL.

VOL. I.



CALCUTTA:

PRINTED AND PUBLISHED BY G. H. HUTTMANN,
AT THE BENGAL MILITARY ORPHAN PRESS.

1840.

INDEX.

N. B.—*This Index is more copious than the marginal notes to the Constructions. It contains the corresponding Rules for Benares and the Ceded Provinces, in instances in which the Rule for Bengal only is given in the Note they may be entered with a pen, e. g. See Construction No. 96, page 24, where the Rule for Bengal, (1799, Reg. VII. Sec. 15.) is entered in the marginal note, while in the Index will be found the Rule for Benares, (1800, Reg. V. Sec. 14,) and for the Ceded Provinces, (1803,) Reg. XXVIII. Sec. 32.)*

<i>Year</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl</i>	<i>Number of Construction</i>	<i>Year.</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl.</i>	<i>Number of Construction</i>
1793	1	5	—	29	1793	13	9	8	53, 231.
1793	3	—	—	316	—	—	11	—	539.
—	—	2	—	75	1793	15	—	—	331, 487.
—	—	8	—	73, 148, 351, 367, 439.	—	—	6	—	359
—	—	10	—	410	—	—	10	—	15, 277.
—	—	14	—	3, 136, 495	—	—	11	—	277.
1793	—	21	—	176	1793	16	—	—	1, 37, 253, 286.
—	—	—	—	346	1793	—	5	—	395
—	—	2	—	429.	1793	—	—	—	83, 61, 313.
—	—	6	—	78, 189, 159, 172, 270, 465,	—	—	6	—	327
—	—	—	—	487	—	—	19	—	23, 309, 316.
—	—	7	—	71, 106, 129	—	—	20	—	23.
—	—	8	—	21, 77, 110, 375.	1793	19	—	—	346.
—	—	11	—	375	—	—	4	—	16.
—	—	13	—	11, 12	1793	22	10	—	161
—	—	15	—	198, 424	—	—	16	—	271.
—	—	16	—	37.	1793	24	—	—	230.
1793	—	22	—	2	1793	28	—	—	174, 493.
—	—	5	7	473.	—	—	7	—	56, 493.
—	—	10	—	150	1793	31	3	5	267.
—	—	28	—	48.	—	—	3	7	240.
1793	7	8	—	92, 417.	1793	34	—	—	32
—	—	10	—	110.	1793	36	—	—	135
—	—	12	—	38.	—	—	9	—	226.
—	—	32	—	18.	—	—	11	—	428
1793	8	16	—	45	—	—	15	—	5, 288.
—	—	25	—	142	1793	38	—	—	449
—	—	49	—	22	1793	—	3	—	55, 397.
—	—	51	2	125, 480.	1793	39	—	—	14, 486.
—	—	32	—	125	1793	40	—	—	103.
—	—	59	—	67	—	—	8	—	64.
1793	9	63	1	67, 480.	—	—	9	11	87.
—	—	4	—	616.	—	—	13	—	87.
—	—	5	—	389, 605.	—	—	14	—	67
—	—	8	—	94	1793	45	—	—	349, 601
—	—	10	—	94, 459.	—	—	17	—	129
—	—	16	—	204.	1793	46	—	—	186.
—	—	17	—	143, 235.	—	—	2	—	84
—	—	40	—	102.	—	—	3	—	9, 11, 12, 34, 57.
—	—	47	—	123.	1793	47	2	—	363
—	—	49	—	81, 200, 256.	1793	49	—	—	17, 23, 39, 42, 167, 266, 311,
—	—	53	—	484.	—	—	—	—	475, 482, 568.
—	—	54	—	137.	—	—	3	—	26, 158.
1793	10	—	—	835	—	—	4	—	121.
1793	13	—	—	54, 58, 237.	—	—	6	—	132, 342.
—	—	8	—	520.	1794	1	—	—	43.

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<i>Year</i>	<i>Reg</i>	<i>Sec.</i>	<i>Cl</i>	<i>Number of Construction</i>	<i>Year</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl</i>	<i>Number of Construction</i>
1794	3	16	—	282.	1798	2	10	—	369
	—	19	—	282	1798	5	4	—	93
1794	4	5	—	257.		—	7	—	17, 265, 266, 281, 311, 581,
	—	7	—	234.					
1794	8	3	—	87	1799	2	2	—	147
	—	8	—	87		—	6	—	157, 206.
1795	1	3	6	29	1799	5	3	—	310
1795	2	14	5	67		—	4	—	310
1795	6	23	—	198, 386.	1799	7	—	—	541
1795	6	42	—	364, 414		—	7	—	4, 33, 53, 130, 312, 337, 496,
1795	7	—	—	See Reg III 1793		—	—	—	519, 531, 575, 599.
1795	8	—	—	See Reg IV 1793.		—	9	—	23, 348.
1795	9	—	—	See Reg V 1793		—	13	—	103, 110, 322, 480.
1795	12	—	—	See Reg XIII 1793		—	15	—	30, 35, 41, 42, 96, 220, 254,
1795	13	—	—	See Reg VII 1793		—	15	4	265, 266, 456
1795	14	—	—	See Reg XLIX 1793.		—	15	5	278, 280.
1795	15	—	—	See Reg XVI 1793		—	15	6	128.
1795	16	—	—	See Reg. IX 1793.		—	15	7	113, 128, 129, 502.
1795	17	10	—	160		—	15	8	382, 394.
	—	14	—	422.		—	18	—	100, 254.
	—	28	—	124		—	26	—	335
1795	23	—	—	See Reg XLVI 1793		—	29	3	291
1795	24	—	—	See Reg XXVIII, 1793		—	29	5	10, 45.
1795	25	—	—	See Reg XLVII 1793	1799	10	2	—	222.
1795	27	2	—	29					
1795	28	—	—	See Reg XXXVI 1793.	1800	1	—	—	310, 596.
1795	31	—	—	See Reg XL. 1793		—	1	—	398.
1795	34	—	—	230.		—	6	—	142
1795	35	—	—	33, 61, 313.	1800	5	—	—	4, 33, 53, 130, 313, 337, 496,
1795	38	9	—	155.		—	9	—	519, 599, 575
1795	45	—	—	See Reg XVII 1793.		—	13	—	23, 348
	—	6	—	327.		—	13	—	103, 110, 322, 480.
	—	17	—	23		—	14	—	30, 35, 41, 42, 96, 220, 254,
	—	18	—	23, 309, 316		—	—	—	265, 266, 456.
1795	47	—	—	See Reg XXXIV 1793		—	14	4	278, 380
1795	48	—	—	See Reg XXXVIII 1793.		—	14	5	128.
1795	49	—	—	See Reg XXXIX 1793.		—	14	6	128
1795	61	2	—	294.		—	14	7	113, 128, 129, 502.
	—	3	—	294.		—	14	8	382, 394
	—	4	—	294.		—	17	—	100, 254.
	—	5	—	294.		5	26	—	45
	—	—	—			—	27	—	282.
1796	2	2	—	20.	1800	6	27	—	43
1796	10	2	—	100, 273, 323, 344, 390, 433, 437, 479, 536	1800	7	28	—	43
	—	3	—	97, 204, 286.	1800	7	5	1	185.
	—	—	—			—	6	2	6
	—	—	—			—	6	3	6.
1797	2	3	1	422.					
1797	3	7	—	175.	1801	1	10	—	291.
1797	4	7	2	204.	1801	3	—	—	139, 454
	—	8	—	153.	1801	6	7	1	296.
	—	11	—	134.		—	7	6	8
1797	6	3	—	187.		—	82	—	224.
	—	16	—	185.					
	—	18	1	25.	1802	3	5	—	109.
	—	18	2	25.		—	6	—	9, 11, 12.
	—	27	—	156.	1803	2	2	—	75.
1797	11	2	—	56, 174.		—	5	—	73, 110, 148, 351, 367, 439,
1797	14	3	—	388		—	8	—	162.
	—	8	—	367, 373, 505, 590.		—	17	—	176.
1798	1	2	—	131, 277, 339.		—	18	3	3, 136, 478, 495.

(V)

<i>Year</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl.</i>	<i>Constructions</i>	<i>Year</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl.</i>	<i>Constructions</i>
1803	8	2	—	429	1803	17	2	—	135
—	—	7	—	78, 139, 159, 172, 270, 465	—	—	* 9	—	226
—	—	9	—	457.	—	—	11	—	428
—	—	10	—	71, 106, 129.	1803	18	3	—	5, 288
—	—	13	—	21, 77, 573	—	—	7	—	174, 493.
—	—	15	—	275	1803	19	—	—	56, 493.
—	—	16	—	11	1803	21	3	—	449
—	—	16	—	424	1803	—	5	—	55, 397
—	—	16	1	138.	1803	—	2	—	1, 27, 253, 286.
—	—	16	3	310	1803	—	—	—	395
—	—	16	4	310	1803	—	—	—	106, 273, 323, 344, 390, 483,
—	—	16	7	541	1803	—	—	—	497, 479, 536.
—	—	17	—	37	1803	—	3	—	97, 204, 236
—	—	18	1	138	1803	24	—	—	230.
—	—	23	—	2	1803	—	2	—	343
1803	4	7	—	473	1803	—	16	—	343.
—	—	10	—	150	1803	25	33	—	29
—	—	12	6	369.	1803	26	—	—	4, 71
—	—	14	1	93	—	—	9	—	291
—	—	28	—	48	—	—	11	—	10, 45
1803	5	14	1	93	—	—	26	—	129.
1803	6	4	—	616	1803	27	11	—	815
—	—	5	—	389, 605.	—	—	14	2	816
—	—	8	—	94	—	—	16	—	830, 833.
—	—	10	—	94, 459.	—	—	19	—	833.
—	—	15	1	123	—	—	23	—	198, 386.
—	—	16	—	204	—	—	39	—	364, 414
—	—	17	—	143	—	—	53	3	93
—	—	19	—	20	1803	28	—	—	33, 61, 318, 323, 519.
—	—	31	—	79, 888.	—	—	6	—	327
1803	7	11	—	102	—	—	17	1	28, 309, 316.
—	—	15	1	123	—	—	17	2	28, 348
—	—	17	—	81, 200, 256.	—	—	18	—	23
—	—	18	1	204	—	—	30	—	107, 322, 480.
—	—	23	—	137.	—	—	32	—	30, 35, 41, 42, 93, 220, 254,
—	—	24	—	153.	—	—	—	—	265, 266, 456.
—	—	35	—	134	—	—	32	4	278, 380.
—	—	39	3	367, 373, 505, 590.	—	—	32	5	128
—	—	41	—	222.	—	—	32	6	128
1803	8	2	2	270	—	—	32	7	113, 128, 129, 502
—	—	23	—	157, 206	—	—	32	8	382, 394
—	—	25	1	78.	—	—	35	—	100, 254.
—	—	25	2	79, 110, 270, 457.	1803	30	2	—	125.
—	—	25	3	110.	—	—	30	—	110
1803	10	—	—	92	1803	31	—	—	346
—	—	7	—	417.	—	—	4	—	16
—	—	9	—	110.	1803	32	—	—	17, 26, 28, 39, 42, 167, 266,
—	—	11	—	88.	—	—	—	—	311, 475, 482
—	—	30	—	18	—	—	8	—	158
1803	12	—	—	54, 58, 237.	—	—	4	—	121
—	—	11	—	520	—	—	6	—	132, 342.
—	—	12	8	53, 231.	1803	34	—	—	331, 487.
—	—	14	—	539.	—	—	5	—	359
1803	14	—	—	186.	—	—	9	—	15, 277.
—	—	2	—	34.	—	—	10	—	277.
—	—	3	—	9, 11, 12, 34, 57.	1803	35	3	3	181, 277, 339.
1803	15	7	—	175.	1803	—	12	—	422.
1803	16	6	—	64.	—	—	10	—	160
—	—	7	11	87	1803	—	16	—	271.
—	—	11	—	87	1803	—	3	5	267.
—	—	12	—	87	1803	—	3	7	210.
—	—	26	11	103	1803	40	—	—	32.

<i>Year</i>	<i>Reg.</i>	<i>Sec</i>	<i>Cl</i>	<i>Constructions</i>	<i>Year</i>	<i>Reg</i>	<i>Sec</i>	<i>Cl</i>	<i>Constructions.</i>
1803	40	30	—	43	1806	17	7	—	277
1803	43	3	—	186		—	8	—	80, 105, 181, 263.
—	20	—	—	156					
1803	46	—	—	14, 436	1807	1	4	2	308.
1803	49	2	—	7,	1807	—	7	—	280.
—	2	7	—	13.	1807	—	3	—	193, 233.
—	3	—	—	7.	1807	9	—	—	52.
—	6	2	—	87.		—	3	—	603
—	24	—	—	109		—	4	—	404
1803	—	24	1	100.		—	6	—	512.
1803	50	1	—	78		—	9	1	295, 512.
—	2	—	—	457		—	9	2	617.
—	2	1	—	78		—	9	2	111.
—	2	2	—	110, 457.		—	17	—	101.
1803	52	—	—	110		—	19	—	65, 79, 85, 94, 206, 237, 244,
—	5	3	—	335.		—	—		259, 388, 423, 459, 610.
1803	53	—	—	142.		—	20	—	189, 191, 516, 595
—	2	2	—	358		—	21	—	612.
—	2	6	—	79, 270.		—	22	—	235, 337
—	2	7	—	236.		—	23	—	114, 120, 167, 283, 340, 382,
—	3	1	—	104, 353	1807	14	8	—	489.
—	5	2	—	228.		—	20	—	49.
—	6	2	—	287.		—	—		422.
—	7	2	—	484.	1808	9	3	—	117, 127.
—	9	—	—	236.		—	5	—	435.
—	9	1	—	47		—	13	—	485.
—	11	—	—	161		—	14	—	46, 118.
1804	3	4	4	14	1808	10	—	—	82, 279.
—	4	4	5	414.		—	6	—	98.
1804	5	—	—	31.	1808	—	7	—	141.
—	10	—	—	49.	1808	13	—	—	72.
1805	2	—	—	432, 478.		—	2	—	69.
—	4	—	—	565		—	3	—	227.
—	4	1	—	27, 316, 467.		—	11	—	198, 331
—	6	—	—	316		—	11	2	90, 536
—	10	—	—	551.		—	12	—	106, 272, 284
—	13	—	—	191.	1809	7	7	—	188.
—	14	2	—	36.	1809	8	—	—	62.
1805	14	3	—	19, 305		—	3	—	306.
—	14	3	—	147.		—	5	—	49, 88, 91, 306.
—	29	8 to 14	—	310, 596		—	5	2	578.
—	29	8	—	398.		—	5	5	192, 244.
1805	9	23	—	142.		—	7	—	51, 344.
1805	12	12	—	29	1809	—	9	—	49.
1805	14	6	—	25		—	9	—	50.
1805	17	2	—	59, 122	1809	9	9	—	168.
1806	—	—	—	142.	1810	6	4	—	63.
1806	2	2	—	30, 512.	1810	—	5	—	63.
—	3	—	—	375, 406.	1810	8	—	—	82, 279.
—	5	—	—	190, 588.		9	31	—	84.
—	10	—	—	44, 569		—	33	—	205, 476.
—	11	—	—	24, 60, 86, 95, 110, 177, 302,	1810	—	39	—	76, 205.
—	—	—	—	308, 309, 319, 328, 372.		13	2	3	83, 90
1806	11	—	—	21.		—	2	4	70, 497.
1806	—	14	—	314.		—	4	2	280.
1806	17	—	—	40		—	4	3	262.
—	—	—	—	181, 370.		—	4	4	66, 74.
—	—	—	—			—	6	3	528.
—	—	—	—			—	9	3	68.

Year	Reg	Sec	Cl	Constructions	Year	Reg	Sec	Cl.	Constructions
1810	13	11	—	164.	1814	1	12	—	321
	—	11	1	208.		—	13	—	163, 180, 187.
1810	14	3	—	350.		—	14	—	180, 187, 274.
	—	4	—	350.		—	14	1	462.
	—	5	—	152.		—	14	4	181.
1810	16	11	—	210, 232.		—	15	—	145, 146, 179, 183, 187, 223,
	—	16	—	229.		—	16	—	242, 243, 289
	—	18	—	229.		—	17	—	145, 182, 188, 187, 223, 242,
1810	20	15	—	392.		—	18	—	243
	—	16	—	392.		—	19	—	170, 183, 187, 202, 223, 242,
	—	17	—	392.		—	—	—	213
	—	22	—	498		—	—	—	188, 188, 243, 247, 261,
1811	1	—	—	287.		—	—	—	171, 175, 188, 184, 207, 243,
	—	2	2	144.	1814	2	3	1	410.
	—	3	1	299.	1814	11	—	—	287.
	—	3	2	299.		—	2	2	299.
	—	3	3	144, 218, 299.		—	2	3	299.
	—	5	—	484.		—	2	4	218, 299
	—	7	—	133, 217.		—	2	5	299.
	—	8	—	133.	1814	15	—	—	307.
	—	9	1	89.	1814	—	2	1	360.
	—	9	2	89.	1814	23	—	—	250, 322, 481.
1811	7	2	3	149.		—	8	2	514.
	—	5	—	94, 233, 459, 528, 530, 610.		—	10	—	64.
1811	10	—	—	99.		—	13	—	196, 332
1812	1	22	—	317.		—	13	2	219.
1812	3	2	—	221.		—	13	3	219.
	—	6	—	151, 193.		—	19	—	400.
1812	4	—	—	377.		—	25	4	276.
1812	5	—	—	574, 581, 599.		—	29	—	400.
	—	9	—	234, 253, 257.		—	45	—	239.
	—	10	—	234, 255, 257.		—	45	4	284.
	—	15	—	234, 255, 348, 421, 503.		—	45	6	284.
	—	17	—	327, 467.		—	45	7	302, 308, 328, 509.
	—	20	—	467.		—	46	—	477.
	—	21	—	103, 112, 116, 126, 165, 166.		—	46	5	284, 472.
	—	—	—	208.		—	49	2	212, 260.
	—	26	—	115, 142, 449.		—	52	—	509, 587
	—	27	—	449.		—	63	—	514.
1812	20	2	—	119.		—	64	—	209.
1813	2	—	—	543.		—	68	—	219.
1813	6	—	—	266, 368, 472, 475.		—	73	—	239, 477.
	—	2	—	253.		—	75	3	238.
	—	3	—	571.		—	—	—	322.
	—	3	2	225.		—	6	2	273.
	—	5	—	140, 281.		—	8	—	251.
	—	5	1	167, 191, 311, 444.		—	8	2	242.
	—	5	3	213, 414.		—	8	7	245.
1813	10	—	22	32.		—	9	4	251, 268.
1813	13	7	—	252.		—	9	6	223.
	—	16	—	215.		—	10	—	223, 356.
	—	—	—	215.		—	11	—	251.
1814	1	—	—	156, 164, 169		—	12	—	231, 268, 285
	—	2	—	187.		—	12	3	194.
	—	9	—	292, 312, 324, 325, 392, 412		1814	25	—	227.
	—	11	—	154, 185, 187, 207, 274, 275,			—	—	227, 245.
	—	—	—	312, 324, 325, 341, 409,			5	—	591.
	—	—	—	412, 431			8	—	205, 262, 363.
	—	—	—				9	—	290.
	—	—	—				11	—	

<i>Year.</i>	<i>Reg.</i>	<i>Sec.</i>	<i>Cl.</i>	<i>Constructions</i>	<i>Year.</i>	<i>Reg.</i>	<i>Sec.</i>	<i>Cl.</i>	<i>Constructions</i>
1814	25	12	—	205, 235, 290, 295, 387.	1817	6	2	—	343.
	—	12	1	437.		17	6	3	403
	—	12	2	383.		—	8	4	365, 558
	—	13	—	205.		—	8	5	287.
	—	14	—	205.		—	9	—	506.
	26	2	—	289.		—	10	1	464
	—	2	1	246, 536		—	10	3	559.
	—	2	2	499.		—	11	—	361, 302.
	—	2	3	248.		—	14	—	611
	—	2	4	536		—	14	2	285, 504, 518.
	—	2	6	245, 351		1817	18	—	384
	—	3	—	551, 613		1817	19	2	356
	—	3	8	470.		—	7	—	613
	—	3	9	470		—	8	—	613.
	—	3	11	297, 300		—	9	—	297
	—	4	—	201		—	9	3	338
	—	4	2	216, 551		—	16	2	285.
	—	5	4	429		1817	20	13	189
	—	8	—	241.		—	16	2	555
	—	8	5	556.		—	16	17	381, 511
	—	8	7	413		—	20	—	518
	—	8	8	413.		—	21	—	608
	—	8	9	413		1818	5	2	602
	—	8	10	413, 437			6	3	295
	—	12	1	406.			8	—	347, 390, 458 548
	—	12	3	376			—	3	460.
	—	15	—	239, 293.			—	9	517
	—	15	5	211.			—	—	307
	—	15	8	238			12	—	298, 303
	—	16	3	207.			—	2	374, 379
	—	16	4	408.			—	2	299
	—	20	—	202			—	3	299, 301
	—	20	1	240.			—	2	299
	—	20	3	537			—	5	299
	—	21	—	224.			—	3	303, 391, 488.
	—	22	—	289			—	4	358, 419, 468
	—	24	—	289			—	5	303, 466
	—	25	1	212			—	—	501, 545
	1814	27	—	92.			—	7	318
	—	16	—	593, 602	1819	2	—	—	508, 534, 603
	—	17	—	371.		—	30	—	320, 499, 527, 576 584.
	—	21	—	417		—	30	1	427, 450, 455, 576, 589.
	—	23	—	197, 199		—	30	7	338, 450.
	—	25	—	500		7	5	—	384
	—	30	—	500		—	6	—	582,
	—	31	—	209, 214, 418.		—	6	2	560
	—	32	—	297, 300		—	6	3	340, 345, 560.
	—	34	—	197		—	6	4	345
	—	37	3	420.		—	6	—	349.
	1814	28	—	186.	1819	8	—	—	313, 329, 461, 523, 597.
	—	7	—	261.		—	9	—	326, 580, 597, 614.
	—	8	—	261.		—	10	—	440
	—	11	—	9.		—	17	2	491
	1816	4	2	247		—	18	—	380, 456, 475, 482, 531.
	—	4	—	507.		—	18	4	496, 502.
	1816	15	10	264.		—	19	—	380
	1816	17	7	344.		1819	9	3	336, 354
	—	7	2	258.		1819	10	—	476.
	—	7	5	573.		—	67	—	471, 496.
	1816	15	—	511.		—	104	—	483
	1816	22	—	304, 411, 608.		—	113	—	483

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Year	Reg.	Sec	Cl	Constructions	Year	Reg	Sec	Cl	Constructions.
1820	3	—	—	314	1824	16	7	1	438
1820	4	—	—	401.		—	8	—	438.
1821	1	3	—	542, 562.	1825	2	—	—	490
1821	2	4	—	400, 480.	1825	3	2	—	599.
	—	5	—	415	1825	4	—	—	446, 529.
	—	5	3	463.		—	4	—	460
	—	7	—	451	1825	7	2	—	532.
	—	8	—	586		—	3	—	554.
	—	12	—	355		—	—	—	509, 601
1821	3	—	—	603	1825	8	2	—	467
	—	2	—	516, 529, 548	1825	12	4	—	402
	—	3	—	415, 516, 595	1825	16	—	—	435.
	—	4	—	415, 451	1825	18	—	—	441.
	—	5	—	437, 521.	1825	20	—	—	443.
1821	4	8	—	603.	1825	—	4	—	498.
1822	1	3	—	423	1825	21	—	—	439
	—	4	—	423		—	—	—	442, 507.
1822	5	—	—	435	1826	3	2	—	486, 545
1822	8	—	—	474		—	4	—	426
1822	9	2	—	533.		—	5	—	525, 544.
1822	11	28	4	469.	1827	5	—	—	508
1823	1	—	—	562.	1828	3	2	—	594.
	—	2	2	562.		—	10	5	492
1823	6	—	—	565.	1828	8	—	—	546, 504.
	—	3	9	515		—	—	—	—
	—	5	—	885		—	—	—	—
1824	1	12	—	388	1829	—	3	1	507.
1824	4	—	—	366.		—	7	—	535.
	—	3	—	611		—	10	—	542
	—	4	—	611	1829	2	3	—	521
1824	6	5	—	419, 488	1829	10	3	—	592.
1824	7	18	4	494.		Sch	A	Ar	537.
1824	10	—	—	405.		—	B	7	538, 555, 557, 584.
	—	3	1	535.		—	B	6	577, 583.
1824	14	—	—	603.		—	B.	9	556.
	—	2	—	425		—	B.	10	537.
	—	5	—	496		—	B.	2	398.
1824	15	—	—	396, 414, 415, 421, 444, 445,	1829	17	3	—	562.
	—	—	—	417, 448, 453, 475, 482,	1829	18	2	2	542
	—	—	—	505, 516, 547, 561, 563,		—	3	—	—
	—	—	—	571, 579,		—	—	—	—
	—	3	—	371, 430, 505	1830	4	—	—	600
	—	5	—	378, 391	1830	5	—	—	561
1824	16	—	—	408, 410, 420, 428	1830	6	2	—	573
	—	3	—	412, 431		—	—	—	—
	—	6	3	438	1831	9	—	—	614, 615

CONSTRUCTIONS
OF THE
REGULATIONS OF GOVERNMENT
BY THE COURTS OF
Sudder Dewanny and Nizamut Adawlut.

THE provisions contained in Regulation XVI. 1793, (extended to Benares by Regulation XV. 1795, and re-enacted for the ceded provinces by Regulation XXI. 1803,) determined by the Sudder Dewanny Adawlut, on the 3d of May, 1798, on reference from the Dacca provincial court, to refer to suits for money or personal property, and to disputed accounts arising out of suits for real property.

May 3, 1798.

No. 1.
17^o.
Reg. XVI.
1795.
Rec. XV.
1803.
Reg. XXI.

The judge of *zillah* Shahabad was informed, that the Court do not consider Section 22, Regulation IV. 1793, to authorize or intend a sequestration of lands, till the judgment of forfeiture be confirmed.

May 2, 1799.

No. 2.
1798.
Reg. IV. Sec. 22.

The Court of Sudder Dewanny Adawlut, in reply to a reference from the Dacca provincial court, determined, on the 8th of April 1802, that a decree not enforced during a period of 12 years and upwards, might be put in execution, on application for that purpose, without a fresh suit; provided the party holding it explain satisfactorily the cause of the delay, and no valid objections are offered by the adverse party.*

April 8, 1802.

No. 3.
1793
Reg. III. Sec. 14.
1803
Reg. II
Sec. 18, Cl. 3.

* The application in the particular case which led to the above reference, was made after a lapse of 16 years. But see the case of Jugarnath Pershad Sircar, appellant, versus Radhanath Sircar and others, in which the Court determined that a decree for landed property should not be executed after the lapse of 13 years without a new suit. Sudder Dewanny Adawlut Reports, vol. II page 280. See the Court's Construction of 28th October, 1813, No. 136, page 40, and Construction of 27th February 1829, No. 495, page 211.

No. 4.

1799.

Reg. VII.

Under Regulation VII. 1799, land belonging to a defaulter other than that for which the balance is due from him, cannot be sold; but his interest in that for which he owes a balance may be sold, and so may his chattels.

January 11, 1803.

No. 5.

1793

Reg. XXXVI.
Sec 15.

1803

Reg. XVII.
Sec 15.

No. 6.

1800

Reg. VII. Sec 6

On a reference from the judge, *zillah* Tipperah, the Court determined, that in the absence of a register from the station, the judge cannot officiate for the registry of deeds, without deputation from the register, under Section 15, Regulation XXXVI. 1793.*

May 10, 1804.

Extract from a letter from the Judge of zillah Nudilea, dated 28th March, 1805.

"The idea which hitherto prevailed in this district, is that if an obligation required to be written on stamp paper, be written on any other kind of stamp paper than that prescribed for such obligation, the collector, after receiving the prescribed penalty, is to cause the proper stamp to be affixed to it; but that if the obligation be written on plain paper, the collector's receipt, stating that the penalty has been paid, is sufficient. whereas it appears to me that whether the obligation be written on plain paper, or on any other kind of stamp paper, than that prescribed for such obligation, the collector, after receiving the prescribed penalty, is bound to transmit it to the superintendent of the stamp office, to have the proper stamp affixed thereto; and that unless the proper stamp is affixed to the obligation, it cannot be admitted in evidence in any court of justice, notwithstanding the collector may have certified that the prescribed penalty has been paid."

Extract from a letter of the Register, Sudder Dewanny Adawlut, in reply, dated 3d April, 1805.

1800
Reg. VII Sec. 6,
Clauses 2, 3.

"The Court are of opinion, that under clauses 2 and 3, of Section 6, Regulation VII. 1800, any instruments written on any other paper than the stamp paper prescribed for such instruments, which may be presented to the collector with the amount of the prescribed penalties, in order to render them legal instruments, ought, as directed in the said clauses, to be forwarded to the superintendent of the office, for the purpose of having proper stamps affixed thereto."

April 3, 1805.

No. 7.

1803

Reg. XLIX.
Secs. 2 and 3.

On a question from the judge of Behar, whether a judge is empowered to recall suits referred by him to an assistant judge, under Sections 2 and 3, Regulation XLIX. 1803, the Court resolved, that a judge is not specially invested, by the regulations, with a discretionary power of recalling suits which have been referred to an assistant judge; the Court declared their opinion, that a judge is not authorized to recall such suits, except in cases of

* See also reference, acting judge Cawnpore, 25th July, 1807.

Ditto ditto, acting judge Cuttack, 19th August, 1813, No 135, page 39. But new rules on this subject have been enacted by Regulation XIV. 1824.

(3)

evident necessity, arising from the absence of an assistant judge, or from the vacancy or discontinuance of the office of assistant judge.

June 5, 1805.

Superintendent of Eastern Salt Chowkees, plaintiff, *versus* Mirza Hossein Alee, *zemindur* of Kismut Euldkhal, defendant.

On the 31st of August, 1804, the judge of Tipperah adjudged a fine of 5000 rupees against the defendant, under Section 7, Regulation VI. 1801, for the illicit manufacture of salt within his *zemindaree*. The defendant petitioned Government, who called on the judge for a report; and understanding from him, that a doubt was entertained whether an appeal from the decision of the *zillah* courts, in such cases, was meant to be allowed, by the terms of the sixth clause of the above section, the following explanation of that clause was communicated to the Sudder Dewanny Adawlut, in a letter from the secretary to Government, 7th February, 1805.

No. 8.
1801
Reg VI Sec 7,
Clause 6

"It appears to the Governor General in Council, that the only object of the rule contained in clause sixth, Section 7, Regulation VI. 1801, was ultimately to afford to individuals, who might be prosecuted for the illicit manufacture of salt, such relief as the circumstances of the case might appear to render reasonable and proper; and that it was by no means intended to preclude such persons from appealing from the decisions of the *zillah* judge to the superior court."

The Sudder Dewanny Adawlut concurred in the above construction of Section Regulation VI. 1801, and informed the Dacca provincial court accordingly.

July 27, 1805.

On a reference from the Moorshedabad court of appeal, to ascertain by whom the subsistence of *pauper* plaintiffs or appellants, confined under the regulations for litigiousness in their plaints or appeals, is payable, the Court of Sudder Dewanny Adawlut determined, that as plaintiffs and appellants, in such cases, are not confined at the instance of the defendant or respondent, any requisite subsistence for them, during their imprisonment, should be paid by Government.

No. 9.
1793
Reg. XLVI.
Sec 3.
1802
Reg III Sec 6

September 13, 1805.

In a case before the Sudder Dewanny Adawlut, between Abdool Ruhaem (purchaser of the lands of Tarnee Churn and Doorga Churn, sold in execution of a decree against their father Ramgovind Mitter), and Neelkunt Mitter and Hurgovind Mitter (former sharers with Ramgovind Mitter), who represented that their shares were ordered by the Calcutta provincial court to be delivered over to the purchaser, with the share of Ramgovind Mitter, under a construction of the fifth clause of Section 29, Regulation VII. 1799, that whatever be specified in the collector's proclamation as the property of the person whose lands are sold, must be delivered over to the purchaser, the Court adopted an opposite construction, viz. that it was not meant by this regulation, and would be evidently unjust, to dispossess

No. 10.
1799
Reg VII S 29
Clause 5

parties, in actual possession, and claiming right of property, of any part of the lands sold.'

September 18, 1805.

No. 11.

1793
Reg. IV Sec 13,
and
ditto
R. reg XLVI.
See 3 and
1802
Reg III. Sec. 6.

On a reference from the judge of *zillah* Behar, in the case of Gool Beebee, the Sudder Dewanny Adawlut informed him, that they did not consider women of rank, who are exempted by Section 13, Regulation IV. 1793, from personal appearance in a court of justice, to be proper objects of the discretionary rule contained in Section 3, Regulation XLVI. 1793, and Section 6, Regulation III. 1802.

* *September 26, 1805.*

No. 12.

Do. do

On a further reference on the same case, the judge was informed, "the Court do not consider the terms of Section 6, Regulation III. 1802, to have taken away the discretion given by Section 3, Regulation XLVI. 1793, but to explain and prescribe that the original rule is to be carried into execution, notwithstanding an appeal, providing, at the same time, for further imprisonment, in the event of litigious appeal."

October 18, 1805.

No. 13.

1803
Reg. XLIX
Sec. 2, Clause 7.

The Sudder Dewanny Adawlut, on a reference from the judge and assistant judge of Hoogly, determined that, under the seventh clause of Section 2, Regulation XLIX. 1803, summonses to respondents, in causes decided by an assistant judge, and appeal to a provincial court, are to be forwarded by the *zillah* judge to the assistant judge, and executed by the latter.

It was at the same time determined, that the native officers appointed to attend an assistant judge, might, as far as their current duties admit, be employed to assist the officers of the *zillah* court, in transcribing the papers of cases appealed to the provincial court; but unless the establishment of the assistant judge be framed with a view to include this duty, it should not be imposed beyond what might be compatible with the discharge of their current duties.

November 15, 1805.

No. 14.

1793
Reg. XXXIX.
1793.
Reg. XLIX
1803.
Reg. XLVI.

On a question from the judge of *zillah* Behar, whether a *pergunnah cauzy* could attest a deed for land situated in a *pergunnah* of which he was not the appointed *cauzy*, and executed out of his proper jurisdiction, the Court of Sudder Dewanny Adawlut expressed their opinion, that the attestation of a *cauzy* to a deed so executed, must be considered entirely unofficial, and of no greater weight than the attestation of other persons not given officially.

November 29, 1805.

* Rules for enquiring into disputed claims of this nature have been laid down in Regulation VII 1825.

Beharce Lell, appellant; *versus* Massummaut Falince Ah. and Mussummaut Phekoo, respondents.

In the case of mortgage granted by respondents to appellant, antecedently to the 20th March, 1780, on condition, that appellant should retain possession and enjoy the profits of the lands mortgaged, until the principal sum lent should be repaid, (the annual profits of the lands being given in lieu of interest,) the Court dismissed the claim of appellant to recover the principal of his loan, and 12 per cent. interest, under Section 19, Regulation XV. 1793, and decreed that the parties should abide by their engagement, on the ground that the provisions and intention of that section, which were meant for the benefit of the mortgagors, are not applicable to this case, in which it appears that the mortgagee had received less than 12 per cent. profit from the lands.

December 18, 1805.

Government, appellant; *versus* Raja Bishoonaugh and Sheeonaugh, respondents.

Appellant sued respondents in the Dewanny Adawlut, *zillah* Moorshedabad, for the right of resuming the *lakhery* of about 4,500 *beegahs* of land, held exempt from assessment, rated at eight annas per *beegah*, about 2,250 rupees per annum. The *zillah* court gave judgment in favour of Government for nearly the whole of the claim, but the provincial court amended the *zillah* decree, and adjudged about 4,000 *beegahs* of the land to be the valid *lakhery* tenure of respondents. Government appealed from this decision to the Sudder Dewanny Adawlut, who determined the appeal to be admissible, on payment of the institution fee upon 20,000 Rs., being ten times the annual amount adjudged against the appellant by the decree of the provincial court.*

January 25, 1806.

Kishna Pershaud Nundee, appellant; *versus* Juggurnauth Shah, respondent.

Respondent complained against appellant for forcible dispossession from a *talukh*, and obtained a judgment for possession, under Regulation XLIX. 1793. The decision of the *zillah* judge stated it to have been established, that the appellant had dispossessed the respondent *ni et armis*. Appellant appealed to the provincial court under Section 7, Regulation V. 1798, denying the forcible possession, and alleging the irrelevancy of Regulation XLIX. 1793, to the case. Provincial court rejected the appeal, on an inference drawn from appellant's statement of the case, against the right of appellant to the *talukh* in dispute. The Sudder Dewanny Adawlut considered this an insufficient ground for rejecting an appeal against the relevancy of Regulation XLIX. 1793, to judge of which, a perusal of the evidence offered in the *zillah* court is requisite, and therefore admitted an appeal.

January 29, 1806.

No. 15.

1793
Reg. XV.
Sec 10

No. 16.

1793
Reg. XIX.
Sec 4.

No. 17.

1793
Reg. XLIX.
1798
Reg. V. Sec 7.

* Government, in such case, does not sue for the property of the land, but for the public assessment demandable from it.—Vide Section 4, Regulation XIX. 1793, &c.

No. 18. The terms of Section 32, Regulation VII. 1793, (relative to fines of pleaders for non-attendance,) were not meant to restrict the civil courts from imposing a less fine than the amount stated, in cases wherein they may consider a less fine adequate. Ruled by Sudder Dewanny Adawlut, on a reference from the Patna provincial court.

February 8, 1806.

No. 19. On a reference from Mr. Macan, judge of city Dacca (who had been register of that court), to ascertain whether he might try in appeal, as judge, causes formerly tried and decided by him as register, the Court of Sudder Dewanny Adawlut determined that as there is no provision for the case in the regulations, he should hear the appeal, taking any new evidence which might appear requisite, and leaving the parties, if dissatisfied with his decision, to appeal therefrom to the provincial court.*

April 26, 1806.

No. 20. The Nizamut Adawlut, on a reference from the magistrate of Cawnpore, determined that complaints of petty criminal offences against British subjects, such as not to warrant commitment for trial before the Supreme Court, were not meant to be included in the provisions contained in Section 2, Regulation II. 1796, (Regulation VI. 1803, Section 19,) when the magistrate is not qualified to act as justice of the peace.

May 3, 1806.

No. 21. On a reference from the Patna provincial court, to ascertain by whom the allowance for subsistence to prisoners is payable, when parties are confined in execution of process for *vakeel's* fees, or the stamp duty on paper used for decrees, the Court of Sudder Dewanny Adawlut informed them that, in pursuance of the spirit and intention of Section 8, Regulation IV. 1793, the subsistence of prisoners confined under civil process, is payable by the persons at whose instance they are confined. That, therefore, in the cases stated, it is payable by the *vakeels*, if the party be confined for their fees, and at their instance, or by Government, if the confinement be ordered on account of the stamp duty, or other item payable to Government. That, however, in all cases, an application for the confinement of the party under civil process is requisite, and that in the first instance, after demand of the amount due, such process should be executed upon the property of the party from whom the amount is due, and the property of his securities.

June 25, 1806.

No. 22. On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Purnea was informed on the 6th August, 1806, that the reference in Section 49, Regulation VIII. 1793, to Section 18, instead of Section 19, of that regulation, is a mistake, as constructively corrected by clause fifth, Section 29, Regulation VII. 1799.

August 6, 1806.

* But on the 27th August, 1819, No. 305, page 123, the Court gave a different construction of the rule.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Nuddea was informed on the 5th August, 1803, that the Court were of opinion, that the suits directed to be brought under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1793, should be considered as summary; but that the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken.

August 9, 1806.

No. 23.
1793
Reg XVII
Sec 19, 20, 1793.
Reg VII Sec 9.
Decrees 1793
Reg XLV
Sec 17, 18 1800.
Leg V See 9.
C. C. P. 1803.
Reg XXVIII.
Sec 17, 18

On a reference to the Court of Sudder Dewanny Adawlut, the provincial court of Calcutta were informed, on the 20th September, 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, does not apply, except to persons confined under decrees of court, and of course is not applicable to persons in confinement at the instance of the collectors for arrears of revenue.

September 20, 1806.

No. 24.
1806.
Reg II. Sec 11

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Cuttack was informed, on the 27th September, 1806, that under Section 12, Regulation XII. 1803, clauses first and second of Section 18, Regulation VI. 1797, are extended to the province of Cuttack; and that by the words "pleadings and other papers which are considered to be of the nature of pleadings" in Section 12, Regulation XII. 1803, are meant to be included all miscellaneous petitions and answers, and other applications made under clause ninth, Section 17, Regulation VI. 1797.

September 27, 1806.

No. 25.
1805
Reg XII Sec 12

On a reference to the Sudder Dewanny Adawlut from the judge of *zillah* Mymensing, the courts of circuit were informed by a circular letter, under date the 27th September, 1806, that under Section 3, Regulation XLIX. 1793, (B. R. XIV. 1793. C. P. Regulation XXXII. 1803,) it was not meant that the inquiry into the fact of forcible dispossession should be *ex parte*, but only to restrict the inquiry to that fact alone, without any investigation as to the right of possession or property.

September 27, 1806.

No. 26.
1793
Reg XLIX
Sec 3
1793
Reg XIV
1803
Reg XXVIII

Extract from a Letter to the Acting Judge of Zillah Bhaugulpore, under date the 21st February, 1807.

No. 27.

1805
Reg II Sec 4.
Clause 1.

The Court are of opinion, that the process of distress was primarily intended to enable landholders and farmers of land to realize their rents for the current year with punctuality; but the regulation does not restrict the process of distress from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under-tenant of the distrainer.

February 1, 1807.

No. 28.

1793
Reg. XLIX.
Benares, 1795.
Reg. XIV.
C. C. P. 1803.
Reg. XXXII

On a reference from the acting judge, *zillah* Nuddea, he was informed on the 28th February, 1807, that under the spirit of Regulation XLIX. 1793, the Court were of opinion, that complaints of violent dispossession from fisheries, tanks, &c. should be taken up under that regulation.

February 28, 1807.

No. 29.

1795
Reg. XXVII.
Sec. 2, and 1795.
Reg. I Sec. 3
Clause 6, Ben
1793
Reg. I Sec. 5
C. C. P. 1803.
R. XXV S. 33.
C. C. P. 1805.
Reg. IX. Sec. 23.

On a reference to the Sudder Dewanny Adawlut, the judge of *zillah* Mirzapore was informed on the 30th May, 1807, that the Court were of opinion, that Section 2, Regulation XXVII. 1795, is applicable in bar of claims preferred by *zemindars*, under clause sixth, Section 3, Regulation I. 1795, for the recovery of their estates from farmers, if the refusal of the *zemindars* to pay the assessment required of them be established; but that the case of actual refusal only, being provided for by Section 2, Regulation XXVII. 1795, it cannot be pleaded in any other case, and if the plea be offered by a farmer to prevent a *zemindar* from being put in possession of his estate, under clause sixth, Section 3, Regulation I. 1795, the proof of the plea must be on the farmer.

May 30, 1807.

No. 30.

1806
Reg. II Sec. 2.
1799
Reg. VII. Sec. 15.
Benares, 1800.
Reg. V. Sec. 14.
C. C. P. 1803
Reg. XXVIII.
Sec. 32

On a reference to the Sudder Dewanny, the register of the *dewanny odarlut*, *zillah* Purnea, was informed on the 18th July, 1807, that the Court were of opinion, that the notice directed by Section 2, Regulation II. 1806, is not applicable to cases of summary process provided for by Section 15, Regulation VII. 1799.

July 18, 1807.

No. 31.

1804
Regulation V.

In reply to a reference to the Sudder Dewanny Adawlut, the judge and magistrate of *zillah* Bareilly was informed, on the 1st August, 1807, that the Court were of opinion, that the provisions contained in Regulation V. 1804, were applicable to English writers, natives of India; and that their appointment and removal ought to be reported accordingly.

August 1, 1807.

No. 32.

1803
Reg. XL
Bengal, 1793
Reg. XXXIV.
Benares, 1795.
Reg. XLVII

On a reference from the acting judge of *zillah* Cawnpore, he was informed on the 1st August 1807, that the Court were of opinion, that persons amenable to his authority, who may sell rum, the manufacture of Bengal, without a license, are liable to the penalties prescribed by Regulation XL. 1803.

August 1, 1807.

No. 33.

1799.
Regulation VII.
Benares, 1800.
Reg. V. 1793
Reg. XVII. and

The acting judge of Behar was informed, on the 21st January, 1808, that the Court were of opinion, that the rules contained in Regulation VII. 1799, as well as of Regulations XVII. 1793, and XXXV. 1795, relating to the power of landholders to proceed against their tenants for arrears of rent, being general, must be understood to apply to all claims

for arrears of rent, whether due from lands paying revenue to Government, or from lands held exempt from public revenue.*

January 21, 1808.

Reg 1793
XXXV
C C P 1803
Reg XXVIII.

On a reference from the judge of Mymensing, relative to sureties for paupers under Sections 2 and 3, Regulation XLVI. 1793, the Sudder Dewanny Adawlut determined, that the responsibility of *hazirzamis* and their property, ceases on their death; but in the event of their absconding, notice to cause the attendance of the parties for whose appearance they are sureties, should be proclaimed at their houses, and in the public *cutteree*; after which, on failure to produce the parties, the fees and costs demandable may be recovered from their property.

February 13, 1808.

No. 34.

1793
Reg XLVI
Sects 2 and 3

In reply to a reference from the acting judge, zillah Juapore, the Court determined on the 26th March, 1808, that the provisions of Section 14, Regulation V. 1800, are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land.

March 26, 1808.

No. 35.

1800
Reg V Sec 14,
Ben 1799
Reg VII Sect 15
C C P 1803
Reg XXVIII,
Section 32.

In answer to a reference to the Sudder Dewanny Adawlut, the register of the zillah court of Cuttack was informed on the 18th May, 1808, that adverting to the provisions of clause 2, Section 14, Regulation II. 1803, as well as to the general spirit of that section, the Court were of opinion that the register is authorized to conduct to issue the summary inquiries referred to in the regulation during the absence of the judge.

May 18, 1808.

No. 36.

1803
Reg II Sec 14,
Clause 2.

The Court determined, that as the rules contained in Regulation XVI. 1793, (extended to Benares by Regulation XV. 1793, and re-enacted for the ceded provinces by Regulation XXI. 1793), were not declared to be applicable to suits for landed property; and as Section 16, Regulation IV. 1793, strictly forbids a report of any matters of fact relating to depending causes, with the exception of cases in which special authority for that purpose is given by the regulations, the reference of a claim for landed property to arbitration is not authorized by the regulations.

June 10, 1808.

No. 37.

1793
Reg XVI
Benares, 1795
Reg XV.
1793
Reg. IV. Sec. 16

On a reference to the Sudder Dewanny Adawlut, relative to the construction of Section 12, Regulation VII. 1793, the Moorshedabad provincial court were informed on the 22d June, 1808, that as no distinct rule is established for levying the fee of the second pleader entertained by parties under the above section, the Court were of opinion, that it

No. 38.

1793
Reg VII S 12.
Benares, 1795
Reg XIII Sec .
C C P 1803
Reg. X. Sec. 11

* The same construction was given on the 22nd of May, 1810, No 61, page 14.

should be levied in common with other fees of pleaders, in conformity with the general rule contained in Section 10, and inserted in the decree as directed by Section 9 of the above regulation.*

June 22, 1808.

No. 39.

1793
Reg. XLIX
Benares, 1793
Reg. XIV
C. C. P. 1803
Reg. XXXII.

The judge of zillah Beerbhoom was informed on the 22d June, 1808, in answer to a reference regarding the construction of Regulation XLIX. 1793, that the provisions of that regulation are applicable only to cases of dispossession by force, amounting to a breach of the peace ; and that in all cases, the fact of forcible dispossession is the only subject of the summary inquiry authorized by the above regulation, all matters of right being cognizable in the regular manner.

June 22, 1808.

No. 40.

1806.
Reg. XI, Sec. 14

Circular orders to the courts of circuit and magistrates respecting application for a military force made by a magistrate, under Section 14, Regulation XI. 1806. Magistrate to transmit to court of circuit copies of their report to Governor General in Council, and court of circuit to report their sentiments to Government, if circumstances appear to require it, but not to issue any direct orders to magistrate.

July 4, 1808.

No. 41.

1799
Reg. VII, Sec. 15.
Benares, 1800
Reg. V Sec. 14.
C. C. P. 1803
Reg. XXVIII.
Section 32

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Jungle Mohauls was informed on the 13th September, 1808, that the Court were of opinion, that the whole of the provisions of Section 15, Regulation VII. 1799, are equally applicable to defaulting tenants and their *malzamins* ; but they cannot be applied to the *hazirzamins*, unless the defaulters for whose appearance they are responsible abscond, in which case, the *hazirzamin*, as well as the *malzamin*, is answerable for what may be due from the defaulter, and may be proceeded against accordingly.

September 13, 1808.

No. 42.

Ditto ditto

In reply to a reference to the Sudder Dewanny Adawlut, the judge of zillah Purnea was informed on the 17th September, 1808, that under the provisions of Section 15, Regulation VII. 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year for which an arrear of rent may be due from him, if he shall not discharge the same on demand. That the Court were further of opinion, that the proprietor of the land is authorized to oust his defaulting tenant, without application to the courts of justice, as declared by clause seventh, Section 15, Regulation VII. 1799, provided no violence be used, so as to bring the case within the provisions of Regulation XLIX. 1793.

September 17, 1808.

* This construction has been superseded by Section 30, Regulation XXVII. 1814.

In reply to a reference to the Suder Dewanny Adawlut, the judge of zillah Ramghur was informed on the 10th November, 1808, that the Court did not consider the rules contained in Sections 27 and 28, Regulation VI. 1800, to supersede those contained in Regulation I. 1794, as far as relates to the reward to be given to informers on the conviction of persons concerned in manufacturing or selling spirituous liquors, &c. without a license that the Court, therefore, were of opinion, that a police *darogah* is entitled equally with other persons to one half of the penalty levied on conviction from such offenders, upon his information.

November 10, 1808.

In answer to a query from the judge of zillah Jungle Mohauls, "Whether in the case of a party, at whose suit a debtor may be confined, having consented to discharge such debtor from confinement, on his executing an agreement to pay the amount of the debt by instalments, and such engagement having been acknowledged and accepted by the parties, and attested by their signatures, in presence of the judge; on failure of the performance of the conditions of such engagement, any process can be issued by the Court for enforcing its payment; or, if it be necessary, that a new suit be instituted by the plaintiff for the recovery of any claim which may be due under such agreement;" the Court of Suder Dewanny Adawlut determined, on the 7th December, 1808, that the spirit and intention of Section 10, Regulation II. 1806, appear to include the above case, provided the *kustbundee* have been given in execution of a decree, and the enforcement of the decree have been suspended in consequence; but that if any payment under the *kustbundee* be alledged by the party or his surety, he should be allowed to prove the same, if not admitted by the opposite party.

December 7, 1808.

The provincial court of Moorshedabad were informed on the 21st December, 1808, that Section 16, Regulation VIII. 1793, relates to *sudder mocurrereedars* holding *mocurreree* farms from Government, to the exclusion of the proprietors of the land; and that clause fifth, Section 29, Regulation VII. 1799, relates to under-tenants holding the lease of land at a fixed rent from the proprietors.

December 21, 1808.

On a reference from the magistrate of zillah Rajeshahye, the Court of Nizamut Adawlut authorized attachment of lands adjudged by Magistrate liable to forfeiture for harbouring *dacoits* under Section 14, Regulation IX. 1808.

May 24, 1809.

A *futwa* must be taken on trial of convicts for escape under Section 9, Regulation LIII. 1803. Letter to second judge of Patna court of circuit.

June 13, 1809.

No. 43.
1794.
Regulation I
Benares, 1795
Reg. XLVII
Section 9
1800.
Reg. VI. Secs. 27
and 28
C. C. P. 1803
Reg. XL Sec. 30.

No. 44.
1806
Reg. II Sec. 10.

No. 45.
1793
Reg. VIII Sec. 16
1799
Reg. VII Sec. 29
Clause 5
Benaree 1800
Reg. V. Sec. 26.

No. 46.
1808.
Reg. IX. Sec. 14.

No. 47.
1803
Reg. LIII. Sec. 9.

No. 48. Appeals against decisions founded upon award of arbitration not to be dismissed, under Section 28, Regulation V. 1793, without having been admitted. See Proceedings in case *Daveepersaud Sein v. Indrajeet Sing.**
 Reg. V. Sec. 28. 1793

September 18, 1809.

No. 49. On a reference from the Benares court of circuit, the Nizamut Adawlut determined, on the 3d October, 1809, that under Section 9, Regulation VIII. 1809, the *naib cutwal, jemadar, and burkundaz* are to be appointed, and may be removed by the magistrate, on sufficient cause, without reference to the court of circuit: but the *jemadars* of the city of Benares being the *darogahs* of wards, the Court were of opinion that under Section 10, Regulation V. 1804; Section 8, Regulation XIV. 1807; and Section 5, Regulation VIII. 1809, they can only be nominated by the magistrate, for the confirmation of the court of circuit, and cannot be removed without the sanction of the latter.†

Reg VIII Sec 9
1809
1804
Reg V Sec 10.
1807

Reg XIV.
Sec. 8, and 1809
Reg. VIII, Sec. 5.

October 3, 1809.

No. 50. The Court at the same time observed, that under Section 11, Regulation VIII. 1809, it is incumbent on the magistrates to specify in the statements of their establishments the names of all native officers receiving ten rupees and upwards, whether the officers be appointed by the magistrate or by the court of circuit.
 Reg VIII, Sec 11. 1809.

October 3, 1809.

No. 51. The Court further declared, that the head scavenger on the magistrate's establishment, receiving upwards of ten rupees per month, can only be appointed or removed on a reference to the court of circuit under Section 7, Regulation VIII. 1809.
 Reg VIII, Sec 7. 1809.

October 3, 1809.

No. 52. Extract from the Proceedings of the Court of Nizamut Adawlut, 4th November, 1809.
 Reg. II Sec. 3. 1807

The third judge of the Patna court of circuit having sentenced a prisoner, under Section 3, Regulation II. 1807, to imprisonment for four years, without further adjudging him to stripes, *tushheer*, and branding, as prescribed by the above section, and having issued his warrant to the magistrate to carry such sentence into execution; the Court determined that the third judge's proceeding was irregular, and that he should either have adjudged the whole of the punishment above specified, or if he considered such punishment too severe, he should have submitted the trial with his sentiments for the sentence of the Court.‡

November 4, 1809.

* This case was reported in the 1st vol of Sudder Dewanny Adawlut's Reports, page 288

† The necessity for this construction has been superseded by the provisions contained in Regulation XVII. 1816.

‡ See also reference from the third judge of the Bareilly court of circuit, recorded 24th of September, 1812. *Banishment* not forming a part of the specific punishment prescribed for forgery or perjury, a judge of circuit is competent to add banishment to the sentence, or not, as he may deem proper.

(13)

On the 18th November, 1809, the Sudder Dewanny Adawlut, in reply to a reference from the Moorshedabad provincial court, determined that the regulations in force did not admit of a summary investigation and decision upon claims of recovery against the *nazirs* of the civil courts, in cases of alleged injuries to parties from neglect of duty or other misconduct. that the claimants in such cases must institute a regular suit, which should be tried and decided as speedily as possible: but that security might be taken from the *nazir* complained against to perform the judgment upon such claims.*

November 18, 1809.

The magistrate of Purnea was informed on the 21st November, 1809, that the Court did not consider the provisions of Regulation XIII. 1793, to preclude a criminal prosecution in cases of corruption, if there appear to be sufficient grounds for such a prosecution.

November 21, 1809.

A circular order was written to the judges of the several civil courts, on the 28th of November, 1809, acquainting them, that the Court were of opinion, that the court of judicature are not authorized to give judgment in favour of any European for land situated without the limits of Calcutta, purchased, rented, or occupied without the sanction of the Governor General in Council; and that the Court were further of opinion, that previously to passing judgment against the European in such cases, he should be allowed an opportunity of applying for the sanction of Government.

November 28, 1809.

On the 12th of December, 1809, the court of Sudder Dewanny Adawlut, in reply to a reference from the judge of Jessore, whether suits instituted by Indigo planters, being British European subjects, under the sum of 50 rupees against their *ryots*, could be tried by the native commissioners; stated it to be their opinion, that suits instituted by Europeans of the nature above specified, might be tried by the native commissioners on a reference from the *zillah* court, after the plaintiff should have executed the bond required by Section 7, Regulation XXVIII. 1793, and Section 2, Regulation XI. 1797.†

December 12, 1809.

The judge of the Jungle Mohals having required information whether persons suing as paupers, whose suits, preferred under Regulation XLVI. 1793, might prove on trial groundless and vexatious, were liable to be committed to close custody in the jail of the *dewanny* or *foujdaree* court under Section 3 of that Regulation, was told on the 19th January, 1810, that the description of persons referred to in Section 3, should be confined in the *dewanny* jail.

January 9, 1810.

* The Court had before determined, (on the 2nd of August, 1803.) that the *nazirs* of civil courts were not liable to pay the amount of sums due from persons who might escape from their custody, unless collusion on their part was proved.

† This construction superseded by clause two, Section 13, Regulation XXIII. 1814.

No. 53.	1793.
	Regulation VII
	Benares, 1790
	Reg V
No. 54.	1793
	Reg XIII.
	Benares,
	1795
	Reg XII
	C. C. P. 1803.
	Reg XII
No. 55.	1793
	Reg XXXVIII.
	Section 3
	Benares, 1795
	Reg XLVIII
	Section 3
	C. C. P. 1803
	Reg XIX
	Section 3

No. 56.	1793
	Reg XXVIII
	Section 7
	1797
	Regulation XI.
	Sec 2
	C. C. P. 1803.
	Reg XVIII.
	Section 7.

No. 57.	1793
	Reg XLVI.
	Sec 3
	Benares, 1795
	Reg XXIII
	Sec 2
	C. C. P. 1803.
	Reg XIV.
	Section 3.

(14)

No. 58.
1793
Reg. XIII.
1803
Reg. XII.

Regulations XIII. 1793, and XII. 1803, whereby parties injured have the option, in cases of corruption and extortion, of instituting a civil action, declared by a circular order of the 18th March, 1810, not to preclude a criminal prosecution, whenever there may appear to be sufficient grounds for it; the prosecution also directed to be public, and to be conducted by the *vakeel* of Government.

March 13, 1810.

No. 59.
1805.
Reg. XIV
Sec. 6.

Upon summary application, the Sudder Dewanny Adawlut decided, that a promise to pay a debt contracted by the Raja of Cojung, before the 14th October, 1803, such promise having been made subsequently to the said date, did not constitute ground of action.

Also correspondence with Government on the subject.

March 28, 1810.

No. 60.
1806.
Reg. II. Sec. 11

In reply to a question submitted by the judge of the Jungle Mohauls, "whether the provisions contained in Regulation II. 1806, for the release of insolvent debtors, were to be considered applicable to cases of persons in confinement on account of demands of rent decreed under summary investigation, or whether the operation of those rules in favour of insolvent debtors, was limited to persons confined under decisions of the courts passed on regular suits;" the Court gave it as their opinion, on the 22d of May, 1810, that the provisions of the rule above quoted for the release of insolvent debtors, were applicable to cases of persons in confinement for arrears of rent under summary decrees.

May 22, 1810.

No. 61.
1793
Reg. XVII.
1795
Reg. XXXV
C. C. P. 1803.
Reg. XXVIII

In a letter to the judge of the Jungle Mohauls, dated 22d May, 1810, the Court determined that the rules for distressment contained in these Regulations, being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.*

May 22, 1810.

No. 62.
1809
Regulation VIII

The Bareilly courts of appeal and circuit were informed on the 19th July, 1810, in reply to a reference made by them, whether, agreeably to Regulation VIII. 1809, they were competent to remove a native police or ministerial officer of their own accord, or whether a representation must be made in the first instance by the judge and magistrate; and also whether a single judge on the circuit, or a single judge at the *sudder* station, could exercise the powers vested in the whole court by the above Regulation; that the Sudder Dewanny and Nizamut Adawlut considered the courts of appeal and circuit in their collective capacity fully empowered, on sufficient ground, to remove, on their own motion, any of the officers whom, by Regulation VIII. 1809, they are competent to remove on reference from the judges and magistrates.

July 19, 1810.

* See also No. 33, page 8.

The magistrate of Beerbhoom was informed, on the 26th July, 1810, that proprietors of *lakhraj* lands and *durputtee taloohdars*, are exempt from the penalties prescribed by Section 4, Regulation VI. 1810, the provisions of which apply exclusively to a *sudder zamindar, taloohdar*, or farmer.

No. 63.
1810
Reg VI. Sec 4

The former are liable, under Section 5, to be punished on conviction of the offence mentioned in the preceding section, by fine and imprisonment, in addition to the punishment noticed in Section 3.

July 26, 1810.

The provisions in Section 8, Regulation XL. 1793, and other regulations, which declared the native commissioners liable to prosecution in the civil court for corruption, or any unwarranted and oppressive act of authority, declared by the Court of Sudder Deewanny Adawlut, on the 11th August, 1810, to be not meant to prohibit a criminal prosecution, in such cases where the nature and circumstances of the offence may appear to call for it.

No. 64.
1793
Regulation XL
Section 8
Bunares, 1795.
Reg XXXI
C. C. P. 1793
Reg XVI.

August 11, 1810.

In reply to a letter from the acting magistrate of zillah Ramghur, requesting a definition of this section, the Court, on the 16th August, 1810, observed, that a magistrate was not authorized to pass a sentence in a single case of theft, of six months' imprisonment, with corporal punishment, and a fine commutable to a further period of confinement; that the punishment was specifically confined to 30 stripes of the rattan, and six months' imprisonment; and that should any objection exist to the infliction of the stripes, and the imprisonment for six months appear insufficient, the party should be made over to take his trial before the court of circuit.

No. 65.
1807
Regulation IX.
Sec. 19.

August 16, 1810.

The Dacca court of appeal having stated a query, whether under the fourth clause of Section 4, Regulation XIII. 1810, a single judge is competent to try and decide original causes instituted before the provincial court; were informed, on the 16th of August, 1810, that the Court considered a single judge authorized by the second clause of Section 2, Regulation XIII. 1810, to try and decide original suits, as well as appeals, and that the provision in the fourth clause of Section 4, Regulation XIII. 1810, has reference to the possible completion of the trial before two or more judges, after having been commenced before a single judge.*

No. 66.
1810
Reg. XIII
Sec 4, Clause 4.

August 16, 1810.

* This construction rendered unnecessary by the provisions of Regulation XXV. 1814, relating to the powers of single judges

No. 67. In reply to a reference from the judge of zillah Nuddea, he was informed on the 16th August, 1810, " That the existing regulations did not authorize any summary process in cases of complaints by *ryots* or other under-tenants, against landholders, or farmers, for refusing to grant *potahs* or give receipts. And that on *ryots* or other tenants, (who may prefer complaints of the above nature against the landholders, or farmers,) establishing their claims to receipts or *pottahs* by regular suit, they would be entitled to receive them, as well as damages, from the party refusing, under the provisions of Sections 59 and 63, Regulation VIII. 1793.

1793
Reg. VIII
Sects. 59 and 63.
Benares, 1795
Reg. II, Sect. 14
Clause 5th

August 16, 1810.

No. 68. On a reference from the provincial court of Benares, the Court of Sudder Dewanny Adawlut determined, on the 30th August, 1810, that clause third, Section 9, Regulation XIII. 1810, does not preclude a special appeal to the provincial court, from the decision of a *zillah* or city judge, in suits tried in appeal from the decision of a native commissioner, not having been referred to the *sudder amern*.

1810
Reg. XIII Sec. 9,
Clause 3d

August 30, 1810.

No. 69. In reply to a reference from the provincial court of Patna, the Court of Sudder Dewanny Adawlut determined, on the 30th August, 1810, that a claim for land and mesne profits thereof, the produce of the land and the amount of the mesne profits being each less than five thousand rupees, but the aggregate of both exceeding that sum, is cognizable in the provincial court in the first instance under Section 2, Regulation XIII. 1808.

1808
Reg. XIII Sec. 2

August 30, 1810.

No. 70. In answer to a query, submitted by the third judge of the court of appeal for the division of Patna, the Court determined, on the 29th November, 1810, that clause fourth, Section 2, Regulation XIII. 1810, must be construed, as restricting a single judge of a court of appeal from dismissing on default appeals from judgments or orders passed by himself, and as restricting a judge of a provincial court from sitting on the trial of appeals from judgments passed by himself, even in company with other judges.

1810
Reg. XIII Sec. 2,
Clause 4th

November 29, 1810.

No. 71. On a reference from the provincial court of Bareilly, the Court of Sudder Dewanny Adawlut determined, on the 29th November, 1810, that no sale of land of whatsoever description (whether paying revenue to Government, or exempt from the payment of revenue,) should be made otherwise than through the Board of Revenue and collectors, in the manner prescribed by Regulation XXVI. 1803.*

1803.
Reg. III. Sec. 9;
and 1803.
Reg. XXVI.

November 29, 1810.

* But see the provisions contained in Section 2, Regulation VII. 1825.

On a question, submitted by the third judge of the Patna court of appeal, "whether every case decided by the court of appeal, under Regulation XIII. 1805. should be appealable to the Sudder Dewanny Adawlut;" the Court, on the 13th December, 1810, declared their opinion, that under the spirit and intention of the regulation, all cases tried and decided in the first instance by the provincial courts, were appealable to the Sudder Dewanny Adawlut, although the amount or value, or the annual produce of the land, adjudged against the appellant, should be less than five thousand Rupees, and that, accordingly, all appeals duly preferred in such cases should be admitted, provided the conditions of appeal are performed, as prescribed by the regulations.

No. 72.
1805
Reg. XIII

December 13, 1810.

On the 4th January, 1811, the Sudder Dewanny Adawlut, in reply to a reference made by the Judge of Rajeshahye, whether a suit for recovery of an excess of rent, collected by a *surburahur*, from a *mokurruree mohaul* situated in Nuddea, should be instituted and tried in Rajeshahye, the defendant's place of residence, or in *zillah* Nuddea; gave it as their opinion, that it should be brought forward and tried in the latter district, on the ground that the lands being situated in Nuddea, any local inquiry that might appear necessary could be made with greater facility and propriety, under the orders of the Court presiding over the jurisdiction in which the lands were included.

No. 73.
1793
Reg. III Sec. 8.
Benares, 1795
Reg. VII Sec. 7
C. C. P. 1803
Reg. II Sec. 5

January 4, 1811.

In answer to a query submitted by the third judge of the Patna provincial court, the Court of Sudder Dewanny Adawlut determined, on the 10th January, 1811, that under clause fourth, Section 4, Regulation XIII. 1810, a single judge of a provincial court is competent to exercise the power vested in the provincial court collectively, by Section 18, Regulation V. 1793, as far as respects the admission of further evidence to be taken for the decision of the provincial court; but that it is not competent to a single judge to refer a suit back to a *zillah* or city court for further investigation and decision, without the concurrence of one or more of the other judges, in conformity with clause third, Section 2, of the above regulation.

No. 74.
1810
Reg. XIII
Sec. 4, Clause 4th.

January 10, 1811.

A question having been agitated by the acting judge of the city of Moorshedabad, through the court of appeal, respecting the application of this rule to the *gomashthabs* of banking houses, the Court, in a letter dated the 31st of January, 1811, gave it as their opinion, that a managing *gomashthab*, under the general and known powers vested in him, might institute and defend suits, and carry on all concerns connected with the *kotees* of which he was the ostensible representative, without producing any authority from his principals for so doing.

No. 75.
1793
Reg. III. Sec. 2.
Benares, 1795
Reg. VIII. Sec. 2
C. C. P. 1803
Reg. II. Sec. 2

January 31, 1811.

No. 76.
1810
Reg. IX. Sec. 39.

In reply to a question from the acting magistrate, *zillah* Agra, respecting the definition of the word "exact" occurring in this section, the Nizamut Adawlut gave their opinion on the 31st January, 1811, that the term must be construed to apply to the actual collection, and not the mere demand, of the duties adverted to; but that the Court considered the offence punishable as a misdemeanor under the regulations and Mahomedan law.

January 31, 1811.

No. 77.
1803
Reg. III Sec. 10.
Bengal, 1793
Reg. IV Sec. 8
Bengal, 1795
Reg. VIII, Sec. 2

In reply to a question from the acting judge of *zillah* Agra, respecting the subsistence money of defaulters confined in jails of *dewanny* courts at the instance of collectors of land revenue under Section 11, Regulation XXVII. 1803, the Sudder Dewanny Adawlut determined on the 31st January, 1811, that the judge should exercise the discretion vested in him by Section 10, Regulation III. 1803, (with regard to defaulters confined at the suit of plaintiffs,) in settling the amount of subsistence money to be allowed to defaulters confined at the suit of collectors.

January 31, 1811.

No. 78.
1803.
Reg. III Sec. 7,
and 1803.
Reg. VIII.
Sec. 25, Clause 1st.
Bengal, 1793
Reg. IV. Sec. 6,
and 1803,
Reg. I. Secs. 1
and 2, Clause 1st.
Bengal, 1795.
Reg. VIII. Sec. 2.

In reply to a reference from the acting magistrate of *zillah* Agra, regarding the mode of process which should be adopted by a magistrate to procure the attendance of witnesses required by him, whose names might not be mentioned on oath by any prosecutor or other person, as essential to the elucidation of the merits of the case; the Nizamut Adawlut observed, on the 14th of February, 1811, that they considered the *zillah* and city magistrates fully competent to issue the process directed by Section 7, Regulation III. 1803, against any witness whose evidence they might require, although such witness was not named on oath by any prosecutor or other person as acquainted with the circumstances of the case.

February 14, 1811.

No. 79.
1803.
Reg. VI Sec. 31,
and 1807.
Reg. IX. Sec. 19,
and 1803
Reg. VIII Sec. 25,
Clause 2d.

The acting magistrate of *zillah* Agra having submitted a question to the Nizamut Adawlut respecting the extent of imprisonment which a magistrate is empowered to adjudge, in lieu of a fine imposed on a witness for non-attendance; the Court, in reply, informed the acting magistrate, on the 28th February, 1811, that the period of imprisonment fixed in lieu of fines imposed by the magistrate, under Section 31, Regulation VI. 1803, (viz. not exceeding one month,) being extended by Section 19, Regulation IX. 1807, to any period not exceeding six months, they considered, under that section, and the second clause of Section 25, Regulation VIII. 1803, witnesses summoned by the magistrate, and after receiving the summons not attending as required, or although attending refusing to give evidence, liable to a fine proportionate to their situation in life, not exceeding the sum of 500 Rupees, (subject to the provision stated in the second clause of Section 25, Regulation VIII. 1803, with respect to attending witnesses;) and in the event of such fine not being paid, liable to be confined for such period as the magistrate may direct, not exceeding the term of six months.*

February 28, 1811.

* Superseded by the Court's construction of 31st of August, 1827, No. 457, page 192.

In reply to a reference from the judge of *zillah* Jessoore, the Sudder Dewanny Adawlut determined, on the 14th of March, 1811, that the provisions of Section 8, Regulation XVII. 1806, do not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him, although stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession; and that a judge is not authorized in such case to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.

The judge was farther informed, that if the mortgager, on being called upon to show cause why the mortgagee should not obtain possession, denied the right of the mortgagee to possess the lands: the question of right could only be determined as directed by Section 5, Regulation I. 1798.

March 14, 1811.

In reply to a reference made by Mr. J. Rees, whether he was competent to pass sentence on a case postponed by him for further evidence, while officiating as judge of circuit for the division of Moorshedabad, (Mr. Rees being no longer employed in that capacity,) the Court determined, on the 15th March, 1811, that Mr. Rees, under the circumstances stated, was incompetent, and that the sentence in the case in question should be passed by the judge of circuit for the division, who might hold the ensuing session.

March 15, 1811.

In reply to a reference of the third judge of the Bareilly court of circuit, with regard to the mode of issuing the warrants of the court to the superintendent of police, the court of circuit was informed on the 28th March, 1811, that the superintendents of police, in their capacity of magistrate, were equally subject to the control of the courts of circuit with all magistrates; and that the warrants and orders of the courts of circuit may be issued to them in like manner as they are usually issued to the *zillah* and city magistrates.

March 28, 1811.

A question having been submitted to the Sudder Dewanny Adawlut, regarding the construction of this clause, the Court, on the 28th March, 1811, gave their opinion in a circular order, that when a single judge of the provincial court, trying a cause in appeal from a *zillah* or city court, shall think the decision of the *zillah* or city court ought to be reversed or altered, and shall record his sentiments to that effect, another judge of the provincial court, sitting afterwards upon the same appeal, and concurring in the recorded opinion of the judge who first sat, may pass a final order or decree, under the spirit of the clause above-mentioned, without waiting the actual presence of two judges at the same sitting.*

March 28, 1811.

No. 80.
1806
Reg. XVII.
Section 8

No. 81.
1793
Reg IX.
Sec 49,
1803
Reg VII.
Sec 17.

No. 82.
1808
Reg. X.
1810.
Reg VIII.

No. 83.
1810.
Reg XIII.
Section 2, Clause 3d

* This construction rendered unnecessary by the provisions of Regulation XXV. 1814, relating to the powers of single judges.

No. 84. The assistant magistrate of *zillah* Allyghur having instructed a police-*darogah* to stop some loads of charcoal proceeding through his jurisdiction, on the ground that a *zemindar* was collecting the same for the manufacture of gunpowder, and that the regulation prohibited the transit of military stores excepting under pass from Government, a reference was made by the Bareilly court of circuit on the subject; and the Nizamut Adawlut determined, on the 3d April, 1811, that charcoal not being specified in Section 31, Regulation IX. 1810, or in its unprepared state generally considered a military store, it could not be deemed liable to seizure and confiscation; and further the Court observed, that they were not aware that it was confiscable under any regulation then in force.

April 3, 1811.

No. 85. The acting magistrate of Agra was informed on the 3d of April, 1811, in reply to a question, "how he was to proceed against two convicts employed on the roads who had committed an assault on a passenger," that if he considered the punishment he was authorized to inflict on the prisoners under Section 19, Regulation IX. 1807, inadequate to their offence, he should commit them to take their trial before the court of circuit.*

April 3, 1811.

No. 86. The judge of the 24-Pergunnahs was informed, on the 11th April, 1811, in reply to certain queries put by him, regarding the construction of Section 11, Regulation II. 1806, that the Court were of opinion, that Section 11, Regulation II. 1806, was applicable only to persons in confinement, under decisions passed by the civil courts; and consequently that the provisions of the above section, though applicable to revenue defaulters, as well as other persons, when confined under a judgment of court, had no reference to the case of a defaulter in confinement, for arrears of revenue, at the instance of a collector against whom no judgment had been passed.†

The Court further gave it as their opinion, that as no fixed period was specified in the regulations, the time to be allowed the creditor to point out the property of a debtor, confined under execution of a judgment, should be left to the discretion of the court by whom the judgment might be enforced.

April 11, 1811.

No. 87. The judge of *zillah* Dinagepore was informed, on the 12th April, 1811, in reply to a reference made by him respecting the powers of registers and native commissioners, in cases of perjury, that as the provisions of Sections 13 and 14, Regulation XL. 1793, restrict the native commissioners from confining parties, *vakeels*, or witnesses, and from

* The magistrates not being authorized by the regulations to inflict stripes, excepting for theft, the acting magistrate appeared to doubt whether a short imprisonment, in addition to the sentences already passed on the prisoners, was a suitable punishment. But see the provisions of Section 5, Regulation XIV. 1816.

† The same construction was given on the 12th of December, 1811, No. 95, page 23, in answer to a reference from acting judge of *zillah* Behai.

enforcing their own decisions; they have no power of taking persons into custody, and consequently cannot themselves commit witnesses for perjury.—The Court also expressed their opinion, that whenever a native commissioner might see sufficient ground for causing a witness to be brought to trial for perjury, he should, under the general rule prescribed by clause eleventh, Section 9, Regulation XL. 1793, record the circumstance and transmit his proceeding to the judge, who, under the general discretion vested in him, with respect to cases referred to the native commissioners, should commit the party to take his trial in pursuance of Section 14, Regulation IV. 1793, or otherwise as he might deem proper.

The Court further remarked, that registers, under Sections 3 and 8, Regulation VIII. 1794, and other rules prescribed for their guidance, being vested with the same powers as the judges in all suits referred to them for decision, were of course competent to commit to trial for perjury, persons whom they might consider guilty of the wilful delivery of false evidence before them.*

April 12, 1811.

A question having arisen, in consequence of the third judge of the court of circuit for the division of Calcutta, having, while singly holding a sitting of that court, authorized the dismissal of a police *darogah*, on the report of the acting magistrate of *zillah* Midnapore, the court of Nizamut Adawlut, viz. the third and fourth judges, against the opinion of the second judge, determined on the 4th July, 1811, that a "single judge holding a sitting of the court of circuit, was not competent, under the existing regulations, to authorize the removal of a police *darogah*." The order passed by the third judge of the Calcutta court, was accordingly revoked, and instructions issued to that court, to reconsider the case, at a sitting consisting of two or more judges.†

July 4, 1811.

The magistrate of Jessore was informed, on the 11th July, 1811, in reply to a reference made by him, that the Court were of opinion, that a person who had been concerned in house-breaking or *dacoity*, giving information to a magistrate, through a police *darogah*, which might lead to the apprehension and conviction of the principal receivers of the stolen property, was entitled to the benefit of the provisions of clauses one and two, Section 9, Regulation I. of 1811.

July 11, 1811.

On the 12th September, 1811, the two following general points of regulation were submitted to the consideration of the Sudder Dewanny Adawlut, in a reference from the Benares court of appeal.

1st. Whether under clause second, Section 11, Regulation XIII. 1808, the court of appeal were competent to restore an appellant to their court to possession, after the possession had been given to the respondent by the *zillah* judge.

2dly. Whether a judge of the provincial court, sitting singly, is competent, under clause third, Section 2, Regulation XIII. 1810, to order possession to be restored to appellant, in the circumstances above supposed.

Bengal. 1794.
Reg. VIII.
Secs. 3 and 8.
Benares 1795.
Reg. LIV. Sec. 2.
C. C. P. 1st & 3.
Reg. XLIX.
See 6, Cl. 2d.

No. 88.

1809
Reg. VIII. Sec. 5.

No. 89.

1811
Reg. I. Sec. 9.
Clauses 1 and 2.

No. 90.

1808.
Reg. XIII. Sec. 11,
Clause 2d.

1810.
Reg. XIII. Sec. 2,
Clause 3d.

* See No. 285, page 107

† But see the provisions of Regulations XXV. 1814, with respect to the powers of single judges.

The reply of the Court was to the following effect :

2. On the first point, the Court are of opinion, that cases may arise, in which the provincial court of appeal would be warranted in restoring the appellant to possession, after the respondent had been put in possession by the *zillah* or city court, in execution of its decree : as for instance, where an appellant had regularly preferred his appeal, and tendered proper security to the *zillah* or city court, and moved it to suspend execution of its decree until the orders of the provincial court could be received. Should the *zillah* or city court, in such circumstances, proceed to execute its decree, and it should appear to the provincial court, that special ground existed for staying execution ; and that court should further judge, that no serious inconvenience would be likely to result from again changing the possession, the Court of Sudder Dewanny Adawlut are of opinion, that the provincial court would be warranted, under such circumstances, in restoring the appellant to possession.

3. The Court likewise observe, that other cases might occur, in which the provincial court would be competent to exercise the power in question ; but all of which cannot of course be foreseen and defined.

4. The determination of the 2d point must depend, the Court remark, on the question, how far the application to the provincial court is to be considered as an appeal from the order of the court below, and the order of the single judge may involve a difference of opinion with the court below.

5. In the case which the Court have supposed in the 2d paragraph of these resolutions, the Court are of opinion, that the single judge would be competent to exercise the power of the Court, since his ordering the appellant to be restored, would obviously involve no difference of opinion with the lower court ; and the application to the provincial court in such a case would be, merely for that court to exercise its own powers ; and could not be considered as an appeal from the orders of the lower court. But supposing a case in which the *zillah* or city judge should have refused to stay his decree, after an appeal had been regularly preferred, on the ground of the security tendered not being valid, as the single judge could not in such a case order the appellant to be restored without admitting the validity of the security, his ordering that measure would involve a difference of opinion with the *zillah* or city judge, and would of consequence exceed his competence.

September 12, 1811.

No. 91. On the 19th September, 1811, the question, "whether a single judge of the court of circuit engaged in the *half yearly* sessions of jail delivery, was competent to authorize the dismission of a police *darogah*, without the concurrence of one of his colleagues," was submitted in a reference from the Patna court ; and the Nizamut Adawlut being of opinion, that the principle of the former determination of July 4, 1811, No. 89, was applicable to the point now before them, a similar order was passed.*

September 19, 1811.

* On this point, see clause eight, Sec. 7, Reg. XVII. 1816.

The Court are of opinion, that the spirit of the provision in Regulation VII. 1793, does not preclude a party in a suit, from authorizing a *mohitir* duly constituted by a written *mohitirwana*, to select one or more of the established pleaders, and execute a *vahaluthoma* to him or them, for conducting the prosecution or defence of the suit.

Such practice enabling parties to ascertain through their *mohitirs*, what *rakheis* are best qualified to undertake their causes, appears unobjectionable, and has been sanctioned by the established usage of the Sudder Dewanny Adawlut.

To Judge Zillah Julapore, 19th September, 1811, No. 16, Sudder Dewanny Adawlut.
September 19, 1811.

The acting judge of *zillah* Goruckpore was informed, on the 26th September, 1811, in reply to a query put by the late judge,—

That the estates of persons who have obtained decrees, establishing their proprietary right in *malgnizree* lands, but who are excluded from possession of these estates by the operation of clause third, Section 53, Regulation XXVII. 1803, are not liable to be disposed of at public sale, in liquidation of the arrears of public revenue; the general principle of clause first, Section 14, Regulation IV. 1803, not being applicable to persons standing in the predicament described.

September 26, 1811.

In answer to a question from the acting magistrate of *zillah* Nuddea, requesting to be informed whether persons convicted of preferring malicious and unfounded charges, may be sentenced to the full extent of punishment prescribed by Section 19, Regulation IX. 1807, or whether the punishment for this offence is by Section 5, Regulation VII. 1811, confined to six months' imprisonment, in addition to the 15 days' imprisonment or fine of fifty Rupees, directed by Sections 8 and 10, of Regulation IX. 1793; the Court declared their opinion, that a magistrate is empowered to punish malicious and unfounded charges, with imprisonment not exceeding six months, and a fine not exceeding 200 Rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months, adding, that they understood Section 5, Regulation VII. 1811, to provide for an extension of the period of imprisonment, limited by Section 10, Regulation IX. 1793, leaving the provision for a fine, as they stood in the regulations before in force.*

October 24, 1811.

A reference having been made by the acting judge of *zillah* Behar, the Sudder Dewanny Adawlut, on the 12th December, 1811, determined that this section was applicable only to persons in confinement under decisions passed by the civil courts; and that the provisions of this section, though applicable to revenue defaulters as well as other persons when confined under a judgment of court, have no reference to the case of a defaulter in confinement, at the instance of a collector, for the arrears of revenue, against whom

No. 62.
1793
Reg VII 1793.
Reg XIII
1803. Reg X.

No. 93.
1803
Reg IV Sec. 14,
Clause 1st
Bengal, 1768.
Reg V Sec 4.
1803
Reg XXVII
Sec. 53, Clause 3d.

No. 94.
1811.
Reg VII Sec 5
1807.
Reg IX. Sec 19.
1793
Reg IX.
Secs. 8 and 10.

No. 95.
1806
Reg. II. Sec. 11.

* Superseded by the Court's construction of 31st August, 1827, No 459, page 104.

no judgment has been passed. This construction obviously comprehends the cases of insolvent *abkars*, confined on the process of a collector under Section 15, Regulation VI. 1800, to whom, therefore, Section 11, Regulation II. of 1806, cannot be applicable.

December 12, 1811.

No. 96.

1799

VII. Sec. 15.

From the Acting Assistant Judge of Zillah Nuddea.

I have to request the favour of your obtaining for me the opinion of the Court of Sudder Dewanny Adawlut, whether summary suits instituted under the VIIth Regulation of 1799, are liable to be tried *ex parte*, on the defaulter evading the process of the Court, or if his attendance is indispensably requisite, and in the event of his not being forthcoming, the claim is to be rejected, and the claimant referred to a regular suit, for the recovery of the arrear.

2. In the XXXVth Regulation of 1795, an *ex parte* investigation was expressly provided for, by the second clause of the 13th Section; but the rules therein laid down, have been superseded by the VIIth Regulation of 1799, and no provision is made for a decision on the proofs adduced solely by the claimant.

3. It has been the practice, for some years past in this Court, to *ishtihar* the defaulter, on a return made by the *nazir*, that he has been unable to seize his person, and in the event of his not appearing, to contest the justness of the demand, to proceed to an investigation on the allegations and documents of the plaintiff only.

4. A different mode of proceeding is, I believe, adopted in some districts, but that which I have noticed as prevailing here, although not in strict conformity with the letter of the regulation, which appears to be grounded on the certainty of the defaulter being secured, is, I apprehend, agreeable to the spirit of it, as it could never have been the intention of the legislature, that the defaulter should derive any advantage, by avoiding the process of the court, or the claim of the plaintiff be rejected in consequence of the inability of the court to enforce its own orders, and especially as the very act of absconding affords strong presumption of the justness of the demand.

To the Judge of Zillah Nuddea.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from Mr. Clark, assistant judge, under date the 26th ultimo, requesting the opinion of the Court, whether summary suits, instituted under Regulation VII. 1799, are liable to be tried *ex parte*, on the defendant's evasion of process for his arrest, and non-attendance on proclamation.

2. The Court observe, that the professed object of the summary process authorized by Section 15, Regulation VII. 1799, (as declared in the first clause of that section,) is to enable landholders, and farmers, to whom arrears of rent may be due, which cannot be realized by distraining the personal property of their under-tenants, to cause the immediate arrest of the defaulter and his surety, and their subsequent detention in close custody, until the arrear be paid, with interest and costs; the proprietor or farmer to whom the arrear may be owing, being at the same time at liberty to attach the *jote* or other tenure of the defaulter, and to manage the same in such manner as he may think proper, until the

rent due be liquidated, with interest, with further provision (in the seventh clause of the above mentioned section) for ousting the defaulting tenant, or bringing his tenure to sale, at the end of the current year, if the arrear be not recovered by the attachment, or discharged by the defaulter, or his surety.

3. The Court are therefore of opinion, that the summary inquiry provided for by Section 15, Regulation VII. 1799, was not intended to be made *ex parte*, but on the arrest of the defaulter, or his surety ; and they are not aware, in what cases and for what purposes it would be advantageous to the landholders, or farmers, claiming an arrear of rent, that the inquiry directed in the above section should be made, without the arrest of the defaulter, or his surety ; unless it be to warrant an application to the *dewanny adawlut* for the sale of a transferable tenure, at the end of a year, in pursuance of the seventh clause before referred to.

4. The Court, however, previously to forming a final opinion on the question referred by the assistant judge, wish to be informed in what cases it has been usual (as stated in the third paragraph of Mr. Clark's letter) to proceed to an investigation, on the allegation and documents of the plaintiff only; and to what effect judgments have been given on such investigations, as well as in what manner they have been executed.*

January 16, 1812.

Any general rules or forms, which courts of circuit may judge it necessary to be observed by the *zillah* and city magistrates, should be proposed in the first instance to the Nizamat Adawlut under the general powers vested in that Court by the section quoted.†

February 27, 1812.

The superintendent of police for the lower provinces, in answer to three questions put by him, regarding the construction of the existing regulations, was informed on the 12th March, 1812,—

1st. That the Court considered him fully competent to pass sentence against any person amenable to his jurisdiction, who should be convicted before him, of resistance to the execution of a warrant or other legal process, issued by him under Section 6 of the regulation quoted.

2d. With respect to his being authorized to make application to the local magistrate to carry the above sentence into execution, the Court observed that they did not consider such authority to be vested in the superintendent by the letter or spirit of the regulation; and further declared their opinion, that the exercise of it would be incompatible with the relative situations held by him and the local authorities.

3d. That the superintendent was competent to pass sentence of punishment against any persons apprehended by, and proved guilty before him, of any offence punishable

No. 97.

1796

Reg. X. Sec 3.

No. 98.

1808.

Regulation X.

Sec. 6.

* See however the provisions contained in Section 18, Regulation VIII. 1819.

† On this point see clause one, Sec. 3, Regulation VII 1829.

under the existing regulations by a *zillah* or city magistrate; but that he was not authorized to apply to the magistrate to carry the said sentences into effect.*

March 12, 1812.

The acting magistrate of *zillah* Agra was informed, on the 23d April 1812, that the Court, adverting to the title and preamble of the regulation quoted, and to the bond, required by Section 5, understood the provisions in it to be applicable only "to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of." The Court, at the same time, observed, that no part of the regulation in question was applicable to the sale of slaves not imported into the British territories.

April 23, 1812.

On a reference from the Patna provincial court, relative to an appeal admitted by the senior judge of the court, against a summary judgment for arrears of rent passed by the judge of Tirhoot, the Court observed, as to one of the points submitted for their decision, viz.—

"Whether the senior judge was competent to admit the appeal in the case stated under the restriction contained in the 18th Section of Regulation VII. 1799," that as the provincial courts are empowered, by the first clause of Section 24, Regulation XLIX. 1803, to admit a special appeal, in all cases, wherein a regular appeal may not lie to them, if the decree appealed from appear erroneous or unjust, the senior judge was competent to admit a special appeal in the case, on the ground stated in his proceeding of the 7th December, 1811, and more fully explained in his subsequent proceeding, of the 30th of that month.†

See also a letter to Benares provincial court, to the same effect, recorded 29th August, 1811.

N. B. The other point included in the above reference was, "whether the *zillah* judge was authorized, under the circular order of the 18th April 1811, to state his objection to the provincial court in an English letter;" and the Court were of opinion that he was; the order alluded to expressly noticing, "Discussions regarding the relative powers of European officers."

April 23, 1812.

To the Judge and Magistrate of Zillah Rajshahye.

No. 101. I am directed by the Court of Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of two letters from you, dated the 15th and 16th instant: in the former reporting that the *vakeels* generally employed at your station had refused to attest confessions made before you; and in the latter, that on communication of the orders conveyed in my letter to you of the 13th instant, they had, with the single exception of Ram Lochun, a *vakeel* attached to the *sudder aumeen's* court, declared their willingness to comply with your requisition, to witness any confession made in their presence in future.

* The office of superintendent of police has been abolished by Regulation I of 1829.

† But see the latest rules relative to special appeals contained in Regulation II. 1825.

2. The Court will have no hesitation in ordering the dismissal of Ram Lochun from his office of *vakeel* in the *sudder aumeen's* court, if no sufficient reason is assigned by him for refusing compliance with your requisition. But they deem it proper, previously to his dismissal, to desire that you will furnish them with a copy of any proceeding which may have been held by you, relative to the disobedience of Ram Lohcun in this instance ; and that, if not already called upon, he be required to state his reasons for not complying with the orders communicated to him.

3. With reference to the observations contained in the 4th paragraph of your letter of the 15th instant, relative to the difficulty generally experienced, and particularly by the *darogahs* of police, in procuring the attendance of creditable persons, to witness confessions, in pursuance of the circular orders of the Nizamut Adawlut, under date the 13th June, 1811, the Court direct me to communicate to you their opinion, that a *darogah* would be fully justified in summoning respectable persons, for the purpose stated, when it might be requisite ; and that in the event of such persons refusing to attend, or to attest a confession taken in their presence, the *darogah* should submit a report of the case to the magistrate ; who, after calling upon the parties for any explanation they might have to offer, would be competent to pass such order on the case (within the general limitation of his authority) as might appear proper.

4. The Court observe, however, that your police *darogahs* should be enjoined to be particularly cautious in the exercise of the power above mentioned, and to avoid, as much as possible, summoning any persons, whose absence from their houses, with reference to their occupations and other circumstances, might be attended with serious inconvenience.

April 23, 1812.

By Section 40, Regulation IX. 1793, the judges of circuit are required to remain at each station until all persons committed, or held to bail by the magistrate, shall have been tried, and (in matters on which sentence is directed to be passed by the judges) *sentence shall have been passed upon them*, or (in cases in which the judges are not authorized to pass sentence) the trial shall have been referred to the Nizamut Adawlut.

A question arises under the above Section, whether a judge of circuit, referring a trial to the Nizamut Adawlut without passing sentence, although within his competence under the general regulations, and upon insufficient grounds, can supply the defect at a different station from that at which the trial may have been held. The Court of Nizamut Adawlut ruled that he can.

May 19, 1812.

In reply to letters from the judge of *zillah* Allahabad, dated the 2d and 5th May, 1812, submitting the following questions; 1st. "Whether a native commissioner in his capacity of *moonsiff*, was competent to receive and decide upon claims (within the prescribed limitation and instituted before him in the first instance) for the recovery of the amount of an unjust attachment and sale of personal property :" and 2dly, "whether in appeals from the decisions of the native commissioners, referred under clause second, Section 9, Regulation XIII. 1810, to the *sudder aumeen*, or to one of his law officers, empow-

No. 102.
1793.
Regulation IX.
Section 40.

No. 103.
1803
Reg. XXVIII.
Section 30
Bengal, 1799.
Reg. VII.
Section 13
Benares, 1800.
Reg. V. Sec. 13.

¹⁸⁰³
Reg. XVI Sec. 26,
Clause eleventh

ered to act as head referee, the pleadings were required to be written on stamp paper, and the usual exhibit fees to be levied on the exhibits received upon such appeal, or not;" he was informed, on the 21st May, 1812, that the native commissioners were authorized, by Section 30, Regulation XXVIII. 1803, to take cognizance of the description of suits noticed by him;* and with respect to the second question, that the Court were of opinion, that under the general terms of the eleventh clause of Section 26, Regulation XVI. 1803, the use of stamp paper was not required; nor the exhibit fee demandable, in appeals referred to the head native commissioners, or the law officers acting as head referees."†

May 21, 1812.

No. 104. The Court of Nizamut Adawlut decided that *tusheer* was not to be awarded by courts of circuit, under clause seventh, Section 2, Regulation LIII. 1803.—See case of Bheekum Bhutt, proceedings Nizamut Adawlut, 24th June, 1812.‡

June 24, 1812.

No. 105. In answer to a letter from the judge of *zillah* Etawah, it was ruled, that an action on the part of the mortgagee for possession, at the expiration of the period of deed of mortgage, cannot lie in the first instance against the mortgagee disputing his claim under the deed, without application being made to foreclose, as directed by Section 8 of the regulation quoted.

June 25, 1812.

No. 106. The judge of *zillah* Allahabad requested the opinion of the Sudder Dewanny Adawlut, whether under any circumstances, besides that of the defect of the appellant to give security in cases of money or other moveable property for staying the decrees of the judge and register, he was competent to exercise any discretion in respect to the execution of them.

In reply the* opinion of the Court was communicated to him, that under the regulations in force, no discretionary power is vested in the courts, with regard to the enforcement or staying execution of decrees for money, or other moveable property, in cases of appeal; and that in such cases the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security under the provisions of clause second, Section 12, Regulation XIII. 1808, for performing the decision which may be passed upon the appeal.

July 10, 1812.

* The same construction was given on the 19th of April, 1828, No 480, page 204.

† This has been superseded by the provisions contained in Regulation X. 1829. See Schedule B, Secs. 8 and 9

‡ Reported in the 1st vol. of the N. A. Reports, page 234.

In answer to a reference made by the judge of zillah Jungle Mehaul, the Sudder Dewanny Adawlut, on the 23d July, 1812, communicated their opinion, that the suits instituted under Regulation V. of 1812, might be referred for the report directed in Section 21 to the register at that station in his capacity of assistant to the collector of Burdwan, he being the only revenue officer on the spot.

July 23, 1812.

A petition for a special appeal, on which the institution fee has been received in conformity to the second clause of Section 24, Regulation XLIX. 1803, being ultimately rejected by a court of appeal, the petitioner has not a right to demand restitution of the institution fee paid by him in the first instance.

If the court, in any case, deem it just and proper that the institution fee be returned, they must submit the case to the Sudder Dewanny Adawlut, who are authorized by the latter part of Section 5, Regulation III. 1802, to direct a return of the institution fee or otherwise.*

August 20, 1812.

On the 3d September, 1812, the Sudder Dewanny Adawlut gave the following opinions, in answer to certain questions proposed in a letter from the judge of zillah Allahabad.

1st. That as the security required by the regulations to be furnished to stay the execution of decrees appealed from, is exclusive of costs; payment of costs should invariably be enforced, though execution may be stayed in other respects. It was at the same time pointed out to the judge, that an express rule to the above effect, with regard to the fees of pleaders, which form a principal part of the costs of suits, is contained in Section 9, Regulation X. 1803.

2d. That plaintiffs, in the summary suits authorized by the regulations, have an option of preferring their claims, either in person or by *rakeel*, and are not required by any regulation to prefer their claims, in such cases, upon oath or solemn declaration, as was stated by the judge to have been the practice in his court.

3d. That a witness, who has been fined in consequence of his refusal to take an oath, cannot, after discharging the fine, be admitted to give his evidence on a solemn declaration, unless the judge, by whom the fine was imposed, should see ground to change his opinion that the witness was not, in the first instance, a proper object of exemption from taking an oath; in which case, the fine might be remitted, and the witness admitted to give his evidence on a *hulufnameh*.

The Court, at the same time, remarked, that the imposition of a fine upon witnesses refusing to take an oath is required by the regulations to be grounded on the deliberate judgment of the Court by whom it is awarded, that the witness is not entitled to be exempted from swearing; and that the subsequent payment of the fine cannot alone affect that decision.

No. 108.
1812.
Reg. V. Sec. 21.

No. 109.
1803
Reg. XLIX.
Section 24

1802
Reg. III. Sec. 5.

No. 110.
1803
Reg. X. Sec. 9.

* See the provisions contained in the second clause of Section 2, Regulation II. 1825.

^{1st 22.}
Reg. L. Sec. 2

Further, that by the second clause of Section 2, Regulation L. 1803, no limitation is fixed to the confinement which a court may award in commutation of fines adjudged in cases of this nature; and that the discretion of the courts, therefore, in this respect, must be regulated by the circumstances of each case: that according to the clause above quoted, a witness, who has been fined for refusing to swear, is to be discharged on paying the fine, if the suit in which his evidence was required have been decided; or still kept in confinement, under the latter part of the same clause, and the original provision of Section 7, Regulation III. 1803, whether he has paid the fine or not, if the cause in which his evidence is required be still pending, until he shall consent to give his deposition on oath as required.

¹⁸⁰³
Reg. II. Sec. 11.

4th. That a person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation II. 1806.

September 3, 1812.

No. 111.

¹⁸⁰⁷
Reg. IX Sec. 9,
Clause second.

On a reference from the senior judge of Moorshedabad court of circuit, requesting the opinion of the Nizamut Adawlut, "whether the courts of circuit were restricted from accepting bail themselves, under the second clause of Section 9, Regulation IX. 1807, which empowers them to instruct the magistrate to admit to bail persons accused of criminal offences not bailable under the general regulations, whilst the charge against them may be under trial;" the Court observed, that cases might arise, though rarely, which would warrant the court of circuit in accepting bail itself, in the first instance; but that such cases cannot be provided for by any general instructions, and when they occur, must depend on their own peculiar circumstances.

October 22, 1812.

No. 112.

¹⁸¹²
Reg. V Sec. 21.

The judge of *zillah* Agra was informed, on the 23d October, 1812, that the Court were of opinion, that suits instituted, either to procure attachments of distress issued by proprietors of rent-free lands to be withdrawn, or to recover damages for undue distress exercised by them, are referrible to the collectors under this section, as well as similar suits respecting land paying revenue to Government.

October 23, 1812.

No. 113.
¹⁷⁹⁹
Reg. VII. Sec 15.

To the Register to the Court of Sudder Dewanny Adawlut.

SIR,

I request you will submit, for the consideration and orders of the superior Court, the accompanying copy of my proceedings of this date, in a miscellaneous case, Rajah Ramnath Roy v. Dostmahomed Khan, which originated in a petition preferred by the former,

alleging the latter to be in balance for the year 1218, B. S., and stating that he was about to resume possession of the farm of Turf Kulum, (which had been granted to the father of Dostmahomed Khan on a lease of 10 years, in the year 1212, B. S.) under the provisions of Regulation VII. 1799, and, therefore, requesting that the judge would issue such orders as would prevent any opposition being made by the farmer to the exercise of the right which was vested in him by the said regulation. An order was accordingly passed by Mr. Cornish, directing the farmer to give up the farm, and to abstain from opposition to the claims of the *zemindar*. Shortly after this, Dostmahomed Khan presented a petition stating that the Rajah, in resuming possession of the farm, was dispossessing him of Gungarampore and other villages attached to his own *tulook* of Kanso, which he had purchased at a sale at the Collector's office in 1207, many years before the grant of the farm. The Judge, after examining the *pottah* and other vouchers produced by the petitioner, ordered that he should remain in possession of Gungarampore and the other villages; that the Rajah should have possession of the farm of Turf Kulum; and evidence and more documents were required from both parties. In the mean time, both parties assembled large bodies of men, and retained possession of what they considered their respective rights, and very serious affrays would have taken place, but for the active measures adopted by Mr. Cornish to prevent them. The witnesses for both parties having attended, the case came before me, when it was clearly proved by the receipts produced by Dostmahomed Khan, that the statement made by the Rajah, that he was in balance, was entirely false; and that he had paid even more than the revenue which was due from him. This being the case, and as it is now proved in court that the demand of balance was false, and that the farmer has not only paid his revenue for 1218, but a considerable part for the present year, I am of opinion that the provisions of Regulation VII. 1799, cannot, upon principles of justice and equity, be allowed to take their course. I trust, therefore, that the superior Court will be pleased to allow of my revising the order of my predecessor, (who was not, when he passed the order, aware of the truth or falsity of the Rajah's statement,) and that Dostmahomed may retain possession of his farm, on condition of fulfilling his engagements, until the expiration of his lease in 1222, B. S., within which time the Rajah may bring his claim regularly before the Court, on the ground of Dostmahomed Khan's possessing himself of the villages of Gungarampore, &c. as part of his *tulook* of Kanso. Should the Court sanction this order, it will at once prevent any further disputes, and will be the fairest and most expedient way of settling those which at present exist between the parties.

I cannot conclude this subject without humbly soliciting the superior Court to take into their consideration the expediency of modifying the rule of the seventh clause of Section 15, Regulation VII. 1799, which particularly relates to proprietors of land being allowed to oust their defaulting tenants (farmers) without any previous application to the courts of justice. The right was never known nor acknowledged in this district till within these few months, and it appears never without abuse. Petty or unproductive farms hold out no temptation to the lessor to resume them. It is in cases similar to that which I have detailed in this address, in which the farm has been gradually improved during a tenure of many years, and where the revenue is well paid up, that the proprietor finds his account in ousting his tenant and putting in a new farmer, who will readily engage to pay an increased rent, when the

1799
Reg. VII.
Sect. 15, Cl. 7.

resources have been augmented by the care and assiduity of the former tenant. Taken in this point of view, it cannot, I think, fail to strike the Court that this power must tend to encourage a breach of good faith between the proprietor and his farmer, and to weaken that security in landed property, which it is the first object of the regulations to strengthen and promote: and although it is provided in what manner a tenant, unjustly ousted, may recover his right, if infringed, yet the process of a regular suit is too tedious, and the benefit too remote to allow of many pursuing it. I trust I shall not be thought presumptuous in offering a few remarks on what appears to me the most expedient way of modifying the present rule, without making any material alteration of the regulations at present in force respecting defaulting tenants.

Instead of the power given to proprietors of land to oust their farmers, without any previous application to the courts of justice, it would be sufficient that it should be necessary for them to proceed against the defaulter under the first six clauses of Section 15, Regulation VII. 1799, when, if the defaulter be taken into custody, and the arrear demanded be proved against him, the proprietor might be allowed to resume the farm; and should he not be taken into custody, or attend after an *ishtihar*, similar to that directed in Section 2, Regulation IV. 1793, the proprietor might be called on to shew cause for ousting the farmer, and, after an enquiry *ex parte*, if proving the farmer to be in balance, might be empowered to resume the farm, and left to recover the amount of the arrear by a regular suit. The immediate enquiry which is made into suits under Regulation VII. of 1799, would prevent the proprietor from being a sufferer by this mode of proceeding, which would, at the same time, form a protection to the farmer against the present undefined power of the proprietor, and would be the means of preventing many serious affrays and breaches of the peace.

There is also another way in which it appears to me that the abuse of this rule may be corrected. It is provided in Sections 15 and 16 of Regulation V. 1812, that if any attachment of property of any tenant of whatever description, whether under-farmer, *ryot*, or defendant *talookdar*, shall have been made, that the tenant, if disputing the justness of the demand, shall bind himself to prosecute; and on his doing so, that the attachment shall be immediately withdrawn, but no notice whatever is taken of the attachment or resumption of the *whole* farm. A clause to that effect, requiring the farmer to enter into a bond to the judge to prosecute within the given time the demand of arrears, would effectually prevent the proprietor from exercising improperly the power of resumption. for it seldom, or perhaps never, happens that the personal property of a farmer is attached for arrears, which must be very trifling indeed to admit of their being liquidated by that process.

Zillah Rajeshahye, Dewanny Adawlut, 30th September, 1812.

Reply to the Judge of Zillah Rajeshahye.

SIR,

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th September last, with the proceedings which accompanied it, relating to the complaint of Ramnath Roy *v.* Dostmahomed Khan, and to communicate to you the following orders and observations in reply.

2. The Court remark, that the orders of the late judge, Mr. Cornish, on the case, appear to have proceeded upon a construction of the seventh clause of Section 15, Regulation VII. 1799, according to which, if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession ; and should the tenant deny that he is in arrear, and refuse to quit, the courts of justice are obliged, upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The court cannot acquiesce in this construction of the clause in question, which, they observe, merely declares that a landholder may oust his defaulting tenant without application to the courts of justice ; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independantly of the clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distress, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means ; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country ; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants ; by satisfying the former, that they would be in no danger of being treated as wrong doers, in consequence of the just and peaceable exercise of their powers ; and making the latter sensible, that in resisting rightful claims, until prosecuted in the courts of justice, they would render themselves liable to costs and damages. The Court are accordingly pleased to authorize your proposed review of the late judge's order in the case.

The Court direct me to add, that they trust the construction above given of the seventh clause of Section 15, Regulation VII. 1799, will obviate the inconveniences which have been experienced from the opposite construction of it, upon which the late judge appears to have acted; and that the Court will take into their future consideration the modifications of the clause in question, which you have suggested.

November 12, 1812.

The Court determined, (on a reference from the Patna court of circuit,) that the courts of circuit at large are empowered by the Regulations to annul commitments made by the magistrate, and to dismiss charges pending before the magistrates, when such commitments and charges shall appear to be clearly and manifestly unfounded.

Resolutions on difference between the magistrate of Tirhoot and Patna court of circuit, recorded 26th November, 1812, Nizamut Adawlut.

November 26, 1812.

The judge of *zillah* Juanpore was informed, on the 3d December, 1812, in answer to a reference transmitted through him from the assistant judge, that the Court were of opinion, that in cases requiring the appointment of a manager of joint and undivided estate, under

No. 114.
1807
Reg. IX. Sec. 23.

No. 115.
1812
Reg. V. Sec. 26.

the provisions of Section 26, Regulation V. 1812, endeavour should, in the first instance, be made to prevail on one of the family, or some friend of the sharers, to undertake that duty gratuitously; but that in the event of its being necessary to make a pecuniary compensation to the person appointed to act as manager, the amount of such compensation must be fixed, on consideration of the circumstances of each case, by the judge making such appointment: and that the manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue, (to be paid to the collector in the same manner as the payment was before made by the proprietors,) and deducting the amount of the compensation which he may have been authorized to receive.

December 3, 1812.

No. 116.
1812
Reg. V Sec. 21.

The judge of *zillah* Midnapore was informed, on the 24th December, 1812, that the Court considered it to be within his discretion to make the reference directed in Section 21, Regulation V. 1812, either to the collector of Midnapore, or to the collectors of Burdwan and Hidgellee, as he might, in each case, deem expedient.

December 24, 1812.

No. 117.
1808
Reg. IX. Sec. 3

The Court determined that the proclamation prescribed in Section 3, Regulation IX. 1808, can be issued, only against persons charged with *dacoity* or gang robbery, to which the provisions of the regulation are expressly directed.—Letter to the magistrate of Etawah, rejecting proposition to proclaim two persons charged with being concerned in an attack on Mr. Halhed, attended with murder and wounding.—Nizamut Adawlut, 21st January, 1813.

January 21, 1813.

No. 118.
1808
Reg. IX. Sec. 14

The Court are of opinion, that the provisions of Section 14, Regulation IX. 1808, can be considered applicable only to the case of harbouring or aiding *dacoits*, proclaimed in conformity with Section 3, of that Regulation.—Letter to magistrate of Midnapore.—Nizamut Adawlut, 25th January, 1813.

January 25, 1813.

No. 119.
1812
Reg. XX. Sec. 2.

The Court are of opinion, that copies of deeds brought for registry, as directed in Section 2, Regulation XX. 1812, being intended merely for record, should be admitted to be drawn out on plain paper.

References, from the judges of Backergunj and Rajeshahye, Proceedings Sudder Dewanny Adawlut, 28th January, 1813.

January 28, 1813.

No. 120.
1807
Reg. IX. Sec. 23.

The Court decided, that the courts of circuit, under Section 23, Regulation IX. 1807, are competent, if they think a magistrate's order (though within the magistrate's competency) improper or unjust, to annul the same, and direct release or commitment of the defendant.

See case of Hyder, Proceedings Nizamut Adawlut, 8th March, 1813, Persian Department.

March 8, 1813.

In the case above mentioned, the Court likewise determined, that a magistrate may decide and pass sentence of punishment, without reference to the court of circuit, under the section quoted in the margin, provided he does not exceed his competency under Section 19, Regulation IX. 1807.

March 8, 1813.

The Court are of opinion, that the restriction contained in Section 6, Regulation XIV. 1805, from hearing suits in which the persons therein specified are parties, is not applicable to cases in which the cause of action has arisen subsequently to the conquest of Cuttack, (14th October, 1803.)

Reference from the senior judge of the Calcutta court of appeal, recorded 17th March, 1813, Sudder Dewanny Adawlut.

March 17, 1813.

Extract from a letter from the Moorshedabad Court of Circuit, dated the 20th January, 1814.

3. By the *futwa* of the law officer, the prisoners are acquitted of the *dacoity* and murder, but are convicted of being receivers of stolen property : in this *futwa* I concur.

4. But a doubt has arisen in my mind, whether persons committed and tried under a specific charge, can be sentenced to punishment for a distinct crime for which they have neither been committed nor tried : I have, therefore, refrained from passing any sentence, and refer the case and trial for the orders of the Nizamut Adawlut.

Extract from the Proceedings of the Nizamut Adawlut, under date the 20th March, 1813.

Present : H. Colebrooke, Esq., Offj. Judge.

On the subject of the doubt expressed in the 4th paragraph of Mr. Brooke's letter, the Court observe, that they are not aware of any objection to sentence a prisoner, convicted as an accessory, under an arraignment as a principal for the same offence, or under a conviction for a less offence ; when arraigned for a greater one of the same nature, and upon the same facts ; and accordingly the Court would have no objection in the case in question, were the prisoners pronounced fully convicted, to sentencing them to punishment for receiving stolen property, knowing it to be stolen, when they were charged with being concerned in stealing. The Court remark at the same time, that if the facts, or the nature of the crime charged, were different, it would be not regular nor just to convict the prisoner of a charge, against which he had not an opportunity of defending himself.

March 20, 1813.

The Court are of opinion, that the magistrate of Benares is competent to sentence the watchmen, referred to in Section 28, Regulation XVII. 1795, to corporal punishment for gross neglect or misconduct in the discharge of their duties, to the extent of the authority vested in him by Section 6, Regulation III. 1812; but as the magistrate is already empowered, under the first mentioned section, to remove watchmen when found inefficient, and to appoint others in their stead, the Court expressed a hope that he would not often see

No. 121.

1793
Reg. XLIX.
Section 4
Benares, 1795.
Reg. XIV. Sec. 2.
G. C. P. 1803.
Reg. XXXII.
Sec. 4

No. 122.

1805.
Reg. XIV. Sec. 6.

No. 123.

1793
Reg. IX. Sec. 47.

No. 124.

1795
Reg. XVII.
Sec. 28.

occasion to exercise the power of inflicting corporal punishment.—Letter to acting magistrate of city Benares.

March 25, 1813.

No. 125. The Court are of opinion, that the penalties prescribed in the cases of exaction by *zemindars* or other actual proprietors of land, mentioned in these sections must be considered exclusive of the refund of the sums proved to have been illegally levied.—To Calcutta court of appeal.

1793
Reg VIII
Sec 51, Clause two,
Sec. 52.

April 22, 1813.

No. 126. In reply to a reference made by the judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 29th April, 1813, determined that all summary suits instituted under Section 21, Regulation V. 1812, must be referred to the collector for report, provided he be on the spot, but that, as the express object of the rule is to expedite the decision of such suits, the reference is by no means necessary, if the collector be absent from the *sudder* station.

1812
Reg. V Sec 21.

April 29, 1813.

No. 127. On a reference from the magistrate of Agra, the Court determined that the proclamation in this section cannot be issued against persons inhabitants of a foreign territory.

1808
Reg. IX. Sec 3

Reference from acting magistrate of *zillah* Purnea, 2d December, 1813.

Ditto Allahabad joint magistrate, 8th March, 1815.

Ditto Benares court of circuit, (communicated to Government,) 5th April 1815.

July 1, 1813.

To the Judge of Zillah Mymensing.

No. 128. I am directed by the Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 22d ultimo, with its enclosures, and to acquaint you that judgments for arrears of rent, passed under the fifth clause of Section 15th, Regulation VII. 1799, and not satisfied within the current Bengal, Fussily, or Willaity year, by the confinement of the defaulting tenant and his security, under that section, or by the attachment of the defaulter's tenure, as authorized by the sixth clause of the above section, may, under the seventh clause of same section, be enforced on application to the *dewanny adawlut*, as therein directed, at the expiration of the Bengal, Fussily, or Willaity year for which the arrear may have been adjudged, by the sale of the defendant's *talook* or other transferable tenure of the defaulter, for the rent of which such judgment may have been passed. But that you were not warranted in applying to the Board of Revenue, to cause the sale of the tenure upon the mere allegation of a balance being due, without any enquiry.

1793
Reg VII Sec 15,
Clause 5, 6, and 7.

The Court must express their regret at learning that you have followed, for so long a period, a practice so injurious to tenants.

July 8, 1813.

The judge of *zillah* Nuddea, having ordered certain lands to be sold at his court-house, under this section, was informed through the Calcutta court of appeal, that all sales of land in execution of judgment, should be made, under the general regulations, through the Board of Revenue.

See also regarding sale of *lakluraj* lands under this section, letters to the acting judge of *zillah* Cuttack, 13th May, 1813, in answer to a letter from him, reporting that he had sold such lands at the court, under Section 7, Regulation IV. 1793.*

July 15, 1813.

Letter from the Calcutta Court of Appeal, dated 13th June, 1813.

We have the honor to submit, for the consideration and orders of the Sudder Dewan-ny Adawlut, the following copies of records, in compliance with a request made by the judge of *zillah* Nuddea, under the provisions of Section 11, Regulation X. of 1796.

No. 1. Copy of a petition of Bykunnauth and Cossynaugh Paul Chowdry, plaintiffs, dated 21st April, 1813.

No. 2. Ditto of answer of Ramuschunder Mookerjee, defendant, dated 26th April, 1813.

No. 3. Ditto of *kuboolcut* of defendant, dated 16th Assaur 1214, B. S.

No. 4. Ditto of proceedings, held by Mr. Shakespear, dated 26th April, 1813.

No. 5. Ditto petition from defendant to the *zillah* court.

No. 6. Ditto from plaintiff to the *zillah* ditto.

No. 7. Ditto ditto, dated 29th March, 1813.

No. 8. Ditto Persian proceedings of the *zillah* court of Nuddea, dated 21st April, 1813.

No. 9. Copy of a petition from plaintiff to the *zillah* court, dated 10th March, 1813.

No. 10. Ditto ditto, from defendant to the *zillah* court, dated 8th April, 1813.

No. 11. Copy of a petition presented to this court by defendant.

No. 12. Copy of Persian proceeding, dated 24th May, 1813.

No. 13. Copy of a precept from the Calcutta provincial court of appeal, dated 24th May, 1813.

No. 14. Copy of a letter from Mr. Shakespear, dated 26th May, 1813.

No. 15. Copy of a letter from the Calcutta provincial court of appeal, dated 5th June, 1813, and of the reply thereto, from Mr. Shakespear.

2. Adverting to the very great arrears of more important public business urgently requiring our uninterrupted attention, and that the order to which the *zillah* judge has objected, is very fully explained by our register's letter to him, dated the 5th instant; we do not think it necessary to discuss the merits of Mr. Shakespear's answer to that letter, under date the 10th instant, but merely content ourselves with stating, that we admit the oversight pointed out in the 3rd paragraph of Mr. Shakespear's remarks.

The superior Court will observe, that our order, to which the judge of *zillah* Nuddea objects, does not reverse his decree, or at all interfere with the merits of it. It has merely directed that this decree shall and ought to be satisfied by the payment of the

No. 129. Reg. VII. Sec 15, Clauses 7 1793 Reg. XLV Sec 17. 1793 Reg. IV. Sec. 7

No. 130. Reg. VII.

* Modified, however, by Reg. VII. 1825.

sum demanded, with interest, and that such payment ought to be accepted, and the sale of the *putnee talook* desisted from.

To concur in opinion with Mr. Shakespear would be to suppose, that the object of the suit and the summary decree is, not to liquidate the balance, but to eject the *putneedar*.

To the Calcutta Court of Appeal, in reply to the above.

The Court of Sudder Dewanny Adawlut, having had under their consideration the correspondence and other papers submitted with your letter of the 18th ultimo, direct me to communicate to you the following observations and orders on the subject of them.

The Court remark, that by their circular orders of the 15th March, 1806, a special appeal is declared to lie to the provincial courts from the orders and judgments of the *zillah* and city courts, in all cases wherein a regular appeal may not lie; and that, under this construction of the regulations, your court was clearly competent to revise and amend the summary judgment passed by the judge of *zillah* Nuddea against Ramuschunder Mookerjee.

The Court are further of opinion, that the sole intent of the summary process, provided by Regulation VII. 1799, being to enable proprietors of land to recover arrears of rents, the judge, upon the said Ramuschunder tendering to him the amount of the arrear adjudged to be due, should have received the same, and have desisted from the sale of his *talook*.

The Court remark, that in all cases the summary judgment is only provisional, and open to correction by a more deliberate investigation; and that in the particular case upon which the reference has arisen, the defendant appears to have claimed credit for the sum of 656 Rupees, upon several items which the judge did not consider a proper subject of inquiry in a summary proceeding: that under such circumstances to bring the defendant's tenure to sale, although he had tendered the amount awarded against him, would be a great and unnecessary hardship.

Whether, upon the *zemindar*, in such a case, establishing, by a regular suit, that a balance was due from the *talookdar* at the end of the year, he (the *zemindar*) would be entitled, in consequence of this failure in his engagements on the part of the *talookdar*, to insist upon the sale of the tenure, is a separate question, respecting which the Court in their present orders mean to give no opinion; but which they observe will be duly considered whenever it shall arise.

The Court observing, that the judge of *zillah* Nuddea advertized the *talook* for sale at his court-house, further direct that you acquaint him for his future guidance, that all sales of land in execution of judgments should be made under the general regulations through the Board of Revenue.

July 15, 1813.

N. B. See further decision of 27th September, 1814, corresponding with this, in summary appeal, Sutcowry Bhose v. Rajah of Burdwan.

No. 131.
1798
Reg. I. Sec. 2.
1806.
Reg. XVII.
Sec. 8.

On a reference occasioned by a difference of opinion between the provincial court for the division of Calcutta and the judge of *zillah* Nuddea, the Court of Sudder Dewanny Adawlut issued a circular order, dated 22d July, 1813, (No. 37 of Circular Orders Sudder Dewanny Adawlut, page 27, Part I. Vol. I. Baptist Mission Press Edition,) containing a construction of the provisions of Section 2, Regulation I. 1798, and Section 8, Regulation

XVII. 1806, relating to the foreclosure of mortgages and conditional sales under deeds of *Bye-bil-wufa* and *Kut-cabaleh*.

July 22, 1813.

Extract from a letter to the Calcutta Court of Circuit, dated 3d August, 1813.

"From the magistrate's (of the 24-Pergunnahs) letter of the 23d June last, the Court understand him to have requested the reference in consequence of his having construed the orders of your court upon the case to imply, that the act of assembling a number of armed men, with the intention of committing an affray, is not a misdemeanor punishable under the Mussulman law and the Regulations: the orders of your court do not appear to the Nizamut Adawlut necessarily to lead to the above conclusion; but to guard against misconception on so important a point, they deem it proper to state their opinion, that the act in question is clearly a misdemeanor."

August 3, 1813.

The courts of circuit apprized, by a circular order of this date, (No. 124, page 95 of Vol. I. Cir. Or. N. A. Baptist Mission Press Edition,) that the provisions of these sections were only applicable to cases, wherein it shall appear that the person convicted, knew that plundered or stolen property was obtained by theft or robbery *at the time of receiving or purchasing the same.*

August 12, 1813.

On a reference from the magistrate of *zillah* Agra, the Court of Nizamut Adawlut, in consideration of the circumstances and rank in life of the prisoners, authorized him not to inflict *godna* on Munsa and other prisoners, convicted of assembling armed men, and occasioning repeated affrays, in which several persons were killed and wounded, and sentenced to perpetual imprisonment in the jail at Agra without fetters or hard labour.

August 19, 1813.

To the Acting Judge and Magistrate of Zillah Cuttack.

I am directed by the Sudder Dewanny and Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 3rd instant, with inclosure from the register at your station; and in reply to communicate to you the opinion of the Court, that you are not authorized, under the regulations, to register any description of deeds required to be registered by the register, and the Court desire that you will discontinue the practice in future.

The Court are further of opinion, that the offices established for the registry of deeds, by Section 2, Regulation XXXVI. 1793, should be fixed at the *sudder* station of the district.

3. You are desired to acquaint Mr. Ward accordingly, pointing out to him, at the same time, that an express provision is made for the occasional absence of a register from his station, by Section 15 of the regulation above cited; in conformity to which, he is at liberty to appoint a deputy to act for him, during the period of his deputation as joint magistrate at Jugurnath.

No. 132.

1793.
Reg. XLIX.
B-naree, 1793.
Reg. XIV.
C.C.P. 1803.
Reg. XXXII

No. 133.

1811
Reg. I. Sec. 7 and 8.

No. 134.

1797
Reg. IV. Sec. II
1803
Reg. VII. Sec. 35.

No. 135.

1793
Reg. XXXVI.
Sec. 2

4. A reference will be made to Government on the subject of the 9th and 10th paragraphs of your letter, and the orders of Government will be duly communicated to you.*

5. In answer to the question contained in the 11th paragraph of your address, I am directed to acquaint you, that all prisoners committed by the joint magistrate for trial before the court of circuit, should be forwarded to the *sudder* station, and brought to trial at the regular session of the district, in like manner with prisoners included in commitments made by yourself.†

August 19, 1813.

No. 136.

1793
Reg. III Sec 14.
1803
Reg. II Sec. 18.
Cl. 3.

Extract of a Letter to the Acting Judge of Zillah Purnea, dated the 28th October, 1813.

“A decree not carried into execution, at the time of its being passed, may be executed on application being made for that purpose, within twelve years from the date of the decision, after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; should the party, however, holding the decree, neglect to make application for enforcing the judgment in his favour within the period above specified, the Court are of opinion, that the application ought not to be admitted, without his establishing, to the satisfaction of the court, good and sufficient cause for the delay.”

October 28, 1813.

No. 137.

1793
Reg. IX. Sec. 54.

Extract of a Letter to the Chief Secretary to Government, under date the 11th November, 1813.

“Whether a trial before the court of circuit can, under any circumstances, be conducted in the absence of the accused, the Court remark, is a point which, as far as they are aware, is entirely novel, and upon which the regulations are silent. Upon general principles, the fitness of requiring the actual personal attendance of the accused in the great majority of cases which fall under the cognizance of the courts of circuit, is obvious; but the court are of opinion, that in the less serious cases, circumstances might exist to warrant exception to the rule. If for example, in the case under discussion, the accused had been a female, who, according to the usages and prejudices of the country, could not, with propriety, personally attend a court of justice, her personal attendance, in the judgment of the Court, might have been very properly dispensed with. Under the difficulty, however, the Court are of opinion, that the judge should have proceeded in conformity to the rule contained in Section 54, Regulation IX. 1793, by referring the question to the law officer of the court of circuit. Supposing the law officer to have declared the accused warranted in his application by the Mussulman law, it would have been the officiating judge’s duty to complete the trial, referring the case to the Nizamut Adawlut, if a reference. On the other hand, if the law officer declared either that the accused was not entitled to the indulgence, or that the determination on the point rested with the judge, as the judiciary delegate of the sovereign, it would have been competent to the officiating judge to have admitted or rejected the application, as he might have deemed just and consistent with proper principle.”

November 11, 1813. Nizamut Adawlut Proceedings.

* Further provisions for the registry of deeds have been made by Regulation IV. 1824.

† Superseded by the provisions of Regulation XVII. 1825.

Kishen Mungul Dos and Joy Kishen Ghose. v. Kutch Alee Khan.

The Mahomedan law declares, that a person cannot sell property not in his possession.

Q. Shall we adopt the Mahomedan law in such cases, or not? The equity of the present case is against the admission of a special appeal.

Determined by Colebrooke and Fombelle, that the court are not bound by the Mahomedan law in such cases, 11th December, 1813.

December 11, 1813.

Extract from the Proceedings of the Nizamut Adawlut, under date the 16th December, 1813.

The Court are of opinion, that commitments for forgery of documents or instruments exhibited in the civil court, are not restricted to the civil courts, in which the alleged forged documents may have been exhibited, but that the magistrates are bound, by virtue of their general powers, to take cognizance of such charges, on the prosecutions of individuals.

The Court, however, are not aware of any objection to the magistrate's suspending his proceedings in any case, in which he may judge that it will be conducive to justice to allow a civil case to be determined before the criminal investigation is pursued: the Court, accordingly, in the present case, authorize the magistrate to suspend his proceedings, until the appealed cause now pending before the Sudder Dewanny Adawlut shall be determined by that Court, which the Court remark may shortly be expected, under the resolution to which that Court have this day come, to take up the suit without regard to the order of the file.

In coming to the resolutions above recorded, the Court concur with the magistrate, in thinking that considerable inconvenience may be experienced from the power allowed to parties, under the general regulations, to prosecute charges of forgery, pending civil suits; in like manner, as inconvenience was heretofore experienced from the same power being possessed by individuals, in cases of perjury, until they were deprived of that power by Regulation III. 1801. The Court will accordingly be glad to receive from the magistrate, through the prescribed channel, the draft of such provisions as he may deem proper for extending to cases of forgery, the principle on which Regulation III. 1801, relating to charges of perjury against parties in civil suits and their witnesses, is founded.

The Court only think it further necessary, in this case, to point out to the magistrate the mistake into which he appears to have fallen, in supposing that instruments which the civil court may deem forged are to be returned to the parties under Section 6, Regulation IV. 1793. The Court remark, that this section refers to documents which a court may refuse to file as not being relevant, or not produced in proper time, or for other good and sufficient cause; but cannot be understood as applying to documents filed, but proved

No. 138.

1793
Reg. IV Sec 15.
1803
Reg. III Sec 16,
Cl. 1.

No. 139.

1801
Reg. III.

1801.
Reg. III.

1793
Reg. IV. Sec 6
Benares, 1795.
Reg. VIII Sec 2.
C C Pro 1803
Reg. III. Sec 7.

* But this construction has been superseded by a later construction, under date the 13th of July, 1827, No. 454, page 191. See also the sentence of the Nizamut Adawlut in the case of Government against Bungseedhur Chowdree, and others, page 203, of the 3d Vol. of the Nizamut Adawlut Reports.

or suspected upon trials to be forgeries ; to return which to the parties producing them, would obviously often tend to defeat justice.

December 16, 1813.

No. 140.
1813.
Reg VI. Sec. 5.

A reference having been made by the judge of zillah Mymensing, the Sudder Dewanny Adawlut resolved, on the 23d December, 1813, that a reasonable period, according to circumstances, should be allowed for the parties to appear in person, or by *vakeel*, and bring forward their proofs, as required by the *perwannahs* addressed to them under the first clause of Section 5, Regulation VI. 1813, and that in the event of their failing to attend within such period, so as to admit of the requisite investigation being made, and the attachment of the land in dispute, appearing necessary for preventing a breach of the peace, this measure might be adopted in the manner provided for the abovementioned clause of the regulation cited in the margin.

December 23, 1813.

No. 141.
1808
Reg X. Sec. 7.

On a reference from the judges of the Patna court of circuit, the Nizamut Adawlut, on the 20th January, 1814, determined that, under the provisions contained in this section of the regulation, the superintendent of police is authorized to make an application to be furnished with a copy of proceedings in trials by the courts of circuit, and that it is incumbent on those courts to comply with such applications.

January 20, 1814.

No. 142.
1812
Reg. V. Sec. 26.

Letter from the Chief Secretary to Government, dated the 11th September, 1813.

I am directed to desire that you will lay before the Sudder Dewanny A dawlut the accompanying copy of a letter and its enclosure from the Board of Commissioners, and acquaint the Court, that the Right Honorable the Governor General in Council is desirous of being furnished with the sentiments of the Court regarding the provision contained in Section 26, Regulation V. 1812, and on the different points noticed in the Board's letter. In the mean time His Lordship in Council remarks, that it never could have been the intention of Government that the lands committed to the charge of managers by the courts of judicature, under that rule, should be exempted from sale, on account of arrears of public assessment; nor is he aware that the wording of the rule will bear that construction.

Copy of a Letter from the Board of Commissioners for the Western Provinces to the Right Honorable the Governor General in Council, dated 20th July, 1813.

We do ourselves the honor of submitting for your Lordship's orders, the accompanying copy of a letter from the collector of Benares, on the subject of an estate to which a manager has, at his application, been deputed by the *zillah* court of Juanpore, under Section 26, Regulation V. 1812.

2. Several points arise out of this letter, on which the Regulation appears to be not sufficiently explicit, and on which we, therefore, beg leave to solicit your Lordship's instructions.

3. In the first place, it occurs to us, that some defined rule would be expedient for proportioning the scale of the expense of management to the income of the estate. On the present occasion, the establishment fixed by the Court for the manager amounts to 480 rupees on a village assessed at only 1,651 rupees, or nearly one-third of the entire *jumma*.

4. Some precise rule would also appear to be indispensable for defining the responsibility of the manager, and the right of interference and control, if any, which the revenue authorities are to exercise over him; or if not, the mode in which they may be able to bring him to a prompt and effectual account. In the present instance, your Lordship will observe, that of two years *jumma*, not a single fraction of a rupee has been paid into the public treasury.

5. It might also be expedient to define more distinctly the nature of the security which is to be required from such managers; whether mere personal bail for their appearance, or an absolute undertaking for the money which may come into their hands. The former would scarcely be a sufficient hold upon them, if exempted from all direct control of the revenue authorities.

6. A further question arises, and for which principally the present reference was brought forward by the collector,—Whether lands under charge of such managers are liable to be sold for balances accruing on them during such management? From the silence of the regulation on this point we infer, that it was intended not to exempt such estates from the general liability of all land. There would appear, at the same time, to be no small hardship in having recourse to this extreme remedy for the payment of a balance arising on a management, over which, not only the proprietor himself, but even the revenue authorities, have no jurisdiction.

Copy of a Letter from the Collector of Benares to the Secretary to the Board of Commissioners for the Western Provinces, dated 29th June, 1813.

I beg leave to enclose a statement of proposed sale of Mouza Anjoorpoor, Pergun nah Bullea.

2. Conceiving it necessary, that the Board should be informed of the particulars of this estate and its balance, previously to issuing orders for the usual advertisement of sale, I request you will acquaint them, that in consequence of the perpetual disputes between the *malgoozars* and *putteedars*, to which cause alone was to be attributed their constant default, I made application to the court of Juapore, under Section 26, Regulation V. 1812, for the appointment of a *serberahar* to collect the rents, and discharge the public revenue from the estate. The Court, as will be observed from the enclosed copies of the proceedings, complied with my *derkhaust*; and appointed a *serberahar*; but from that time to the present, neither the balances of 1219, nor the current *kists* of 1220 Fussily, have been paid into the *mofussil* treasury, or remitted from the court to this. The amount of balances at present outstanding against the estate, is for 1219 Fussily, 1651 Rupees. }
1220 ditto, 1651 ditto. }

3. The section above quoted contains no directions as to the measures to be pursued when balances of public revenue shall occur under the management of *serberahars*, and conceiving that the general tenor of the revenue code, namely, that the lands of proprietors are liable for their revenue engagements, cannot be effected by this regulation, I have proposed the estate for sale; but I have to solicit the Board's special orders on this case, to serve for my guidance in future.

4. In the interim, I have applied to the *adawlut* to know the causes of the failure of the *serberahar*, and have requested the court to take immediate measures to make good the public dues, and to prevent such delay in future.

5. I request that the Board will favour me with their opinion, whether *serberahars* appointed by the courts, under the above quoted section and regulation, either on the application of the revenue authorities, or of individuals, should not be required to execute the usual revenue engagements of *cuholeut* and *kislbundee*, &c., by which they bind themselves to the payment of the public instalments at stipulated times, and which documents may be produced against them as occasion shall require.

Letter to the Chief Secretary to Government, dated 3d February, 1814.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter, under date the 11th September last, desiring the sentiments of the Court on the points noticed in a letter from the Board of Commissioners for the Upper Provinces, dated the 20th July, 1813.

1812
Reg. V. Sec. 26.

2. The Court are of opinion, that the public sale of lands for arrears of revenue, in all cases wherein the Governor General in Council, or the Board of Revenue, or Board of Commissioners, in cases left to the discretion of those Boards, may judge it proper to direct such sales, is not restricted or effected in any respect, by the appointment of a manager under Section 26, Regulation V. 1812.

1800
Reg. I Sec. 6.
1805
Reg. VIII Sec. 29,
Clause 13
1803.
Reg. LII Sec. 5,
Clause 3.
1793
Reg. VIII. Sec. 25.

3. In forming this opinion, the Court have considered the terms and intention of the abovementioned section. They have also adverted to the provisions of Section 6, Regulation I. 1800, and of the thirteenth clause of Section 29, Regulation VIII. 1805, in cases wherein guardians to proprietors of joint undivided estates are appointed by the courts of judicature, as well as to the third clause of Section 5, Regulation LII. 1803, applicable to managers nominated by the collectors, and approved by the Board of Commissioners, in the cases provided for by that section, and corresponding with Section 25, Regulation VIII. 1793, in force for the Lower Provinces, till rescinded by Section 2, Regulation XVII. 1805. In noticing Section 5, Regulation LII. 1803, however, the Court judge it of importance to add, that a doubt may be entertained whether this section, though not repealed by Regulation XVII. 1805, confined to the Lower Provinces, has not been virtually superseded by Section 26, Regulation V. 1812, and beg leave, therefore, to suggest the expediency of determining this point in some future regulation. The Court presume, that Section 5, Regulation LII. 1803, was acted upon in the Upper Provinces, before the promulgation of Regulation V. 1812, but are not informed whether the Board of Commissioners have considered it to be subsequently in force, or superseded by Section 26 of that regulation.

1805.
Reg. XVII. Sec. 2

4. The Court entirely concur with the Board of Commissioners, in the expediency of establishing a rule for proportioning, as far as practicable, the expense of management to the extent and produce of the estate, when a manager may be appointed under Section 26, Regulation V. 1812; and beg leave to suggest, that the Board of Commissioners and Board of Revenue be consulted on the tenor and limitations of the rule which may appear proper to enact for this purpose.

5. With regard to the responsibility of managers of estates appointed under Section 26, Regulation V. 1812, the Court are of opinion, that as it is not particularly defined in that Regulation, it must be considered that of an agent, acting for the benefit of his principal, and bound to a faithful discharge of the trust committed to him. The Court are further of opinion, that "proper security," directed to be taken from managers appointed under the section above mentioned, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts; and should be proportionate to "the extent thereof," as declared in Regulation V. 1799, Section 6, and Regulation III. 1803, Section 16, clause 6, with respect to administrators appointed by the civil courts in the cases therein provided for.

6. With respect to a further point noticed by the Board of Commissioners, viz. "the right of interference and control, if any, which the revenue authorities are to exercise over a manager appointed by a court of judicature, under Section 26, Regulation V. 1812," the Court see no reason to doubt, that, in the event of any arrear of the public revenue, or in any other case wherein the revenue authorities are authorized to interfere under the general regulations, they have the same right of interference in an estate under charge of a manager appointed in pursuance of Section 26, Regulation V. 1812, as if the manager had been appointed by the proprietors of the estate. The Court, however, observe, that it would be proper to give notice to the *zilah* court, with a view to the removal of such manager, whenever the revenue authorities might not judge it proper to employ him in managing the estate, during an attachment for arrears of revenue or otherwise.*

February 3, 1814.

In answer to a reference from the judges of the Patna court of circuit, the Nizamut Adawlut, on the 3d February, 1814, state it as their opinion, that the rule contained in this section being applicable to the superintendents of police in their capacity of magistrate, the calendars therein prescribed should be submitted monthly by those officers to the court of circuit of the division to which it may properly belong under the regulations to take cognizance of the cases comprehended in such calendars, with reference to the district in which the prisoners have been apprehended.

February 3, 1814.

The courts of circuit were cautioned, by a circular order, to observe the distinction between burglary in a dwelling house and in a warehouse, on which the difference of punishment depends, under the provision of these sections.†

February 24, 1814.

No. 143.

1793
Reg IX Sec 17
extended to Benares,
by S 4, Reg XVI.
1795
C. C. P. 1803
Reg VI Sec. 17.

No. 144.

1811
Reg I Sec 2,
Clause 2 and Sec. 3,
Clause 3.

* By Regulation V. 1827, all attached estates are now placed under the management of the collectors.

† This distinction has been abolished by Regulation XII. of 1818.

No. 145.

Reg. I. Sec. 15
and 16
1814

A reference having been made by the acting judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined, that under Sections 15 and 16, Regulation I. 1814, in the case of a person wishing to file several exhibits, or to procure the attendance of more than one witness, it is not necessary for such person to present a separate petition for leave to file each exhibit, or for a summons to be issued for each witness, but that a single petition may be admitted for two or more exhibits, or two or more witnesses, provided it be written on stampt paper of such a value as to secure Government the duty established on each exhibit that may be filed, or on each witness summoned.*

March 19, 1814.

No. 146.

Reg. I. Sec. 15.
1814

A reference having been made by the acting judge of zillah Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut, on the 19th March, 1814, determined that what has been usually considered a distinct exhibit, whether composed of one or more sheets, would be admissible as such, under the section of the regulation cited in the margin.

March 19, 1814.

No. 147.

Reg. II Sec. 2.
1799
Bareilly, 1805
Reg. VIII. Sec. 14
Clause third.

On a reference from the Moorshedabad court of circuit, the Nizamut Adawlut, on the 31st March, 1814, stated it as their opinion, that by commencing the jail deliveries of the city early in each month, in the generality of cases wherein further evidence might be required, the judge would be able to procure it in sufficient time to admit of his completing the trial before the close of the month; but that should circumstances occur to render it impracticable for the judge holding a monthly jail delivery to dispose of any particular trial by the end of the month, such trial ought to be postponed for the judge whose duty it may be to hold the session for the ensuing month. Also that any miscellaneous business not completed before the end of the month should be made over to the judge holding the jail delivery for the following month.

March 31, 1814.

No. 148.

Reg. II Sec. 5.
1803
Bengal, 1793
Reg. III Sec. 8.
Benares, 1795
Reg. VII. Sec. 7.

The magistrate of Allahabad, on the complaint of A, ordered that B should give up to him his daughter, whom A alleged that he had married. The Benares court of circuit, considering that the case was not cognizable in the *foujdary* court, rescinded the magistrate's order, leaving the complainant the option of suing to prove his marriage in the regular suit in the civil court. On a reference by the magistrate, the court of Nizamut Adawlut, on 31st March, 1814, concurring with the court of circuit, stated it as their opinion that all suits or complaints relative to marriage were to be heard in the civil courts. The court at the same time stated that they were of opinion, that it was expedient to provide

* This construction has been made law by Section 22, Regulation XXVI. 1814.

a summary process for cases of a similar nature, and that they would accordingly include a provision for that purpose in some future regulation.

March 31, 1814.

In reply to a reference made by the Moorshedabad court of circuit, the Nizamut Adawlut, on the 31st March, 1814, gave it as their opinion, that in cases of the nature mentioned in this clause of the section of this regulation, the *darogah* or other police officer could not be considered as authorized to apprehend the person accused, until he shall have completed the inquiry which he is required to make by that section ; and that with respect to the term " evidence" in the section in question, it was intended that the *darogah* should send the *written* evidence with the accused, at the same time taking the recognizances from the witnesses, in pursuance of Section 15, Regulation IX. 1807, to appear before the magistrate on a specific date.

March 31, 1814.

On a reference from the senior judge of the Bareilly court of appeal, the Sudder De-wanny Adawlut determined, on the 7th April, 1814, that under Section 10, Regulation IV. 1803, should it appear from an abstract statement of decided causes transmitted to the provincial court by a *zillah* judge subject to their control, that such officer had not adjudged on trial the prescribed number of causes, it is within their competency to require him to furnish an explanation of the same.

April 7, 1814.

On the 7th April, 1814, the Court declared, that the 6th Section of Regulation III. 1812, was applicable only to *chowkeedars*, or other description of village watchmen : and the magistrates not being empowered, by the regulations before in force, to inflict corporal punishment except in cases of theft, they judged it proper, in consideration of the stripes inflicted by the magistrate of Nuddea, to remit that part of the sentence which directed forfeiture of his arrears of salary.

April 7, 1814.

On a reference from the acting magistrate of Rungpoor, through the Moorshedabad court of circuit, reporting that he had proclaimed an offer of pardon to any person, not being a principal in a robbery which had been committed, who should discover his accomplices and give information leading to the recovery of the plundered property ; the Court of Nizamut Adawlut determined, that they could not sanction an offer of pardon without having before them the information required by clause second, Section 5, Regulation XIV. 1810, respecting the privity or other criminality of *the person* proposed to be pardoned.

The Court had before authorized a general offer of pardon, in some instances, wherein none of the offenders had been apprehended or known.

See letter to Patna court of circuit, 17th March, 1813, and acting magistrate *zillah* Rajeshahye, 21st January, 1813.

April 7, 1814.

No. 149.
ISII
Reg VII Sec. 2.
Clause 3.

No. 150.
1803
Reg. IV. Sec. 10.
Bengal, 1793
Reg V Sec 10.
Benares, 1795.
Reg IX. Sec 6

No. 151.
1812.
Reg. III Sec. 6.

No. 152.
1810.
Reg. XIV. Sec. 5

In reply to a letter from the Moorshedabad court of circuit the Nizamut Adawlut, on the 14th April, 1814, declared that the section of the regulation quoted in the margin had express reference to the case of a law officer of a court of circuit being prevented, by indisposition or otherwise, from attending that court whilst sitting at any *zillah* or city station; and that whenever the law officer, whose proper duty it might be, is prevented by illness or other cause from proceeding on the circuit, a report should be made for the information and orders of the Nizamut Adawlut.

April 14, 1814.

In answer to a reference made by the acting judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, 1814, determined that *hoondees* must be written on stamp paper.

April 21, 1814.

In answer to a reference made by the *zillah* judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut declared, on the 21st April, 1814, that the rule contained in Section 9, Regulation XXXVIII. 1795, for levying fees on miscellaneous petitions, must be considered as superseded by the provisions contained in Section 18, Regulation I. 1814.

April 21, 1814.

In answer to a reference made by the *zillah* judge of Rajeshahye, through the Moorshedabad court of appeal, the Sudder Dewanny Adawlut, on the 21st April, 1814, observed, that as Regulation I. 1814, is silent upon the deduction of 5 per cent. from the amount of all fees payable to the authorized *vakeels*, they concluded it was not the intention of Government to subject the *vakeels* to any charge beyond what they are liable to on account of the stamp paper to be used in granting receipts for their fees.

See also letter to the acting judge of *zillah* Furruckabad, dated 17th August, 1814.

April 21, 1814.

A reference having been made by the magistrate of *zillah* Nuddea, regarding the construction of this regulation, the Nizamut Adawlut, under date April 28th, 1814, determined that it directs that all guards having custody of convicts, who may appear to be guilty of a wilful neglect, should be immediately dismissed from the public service, and that it could not be understood to empower a magistrate to declare, by a public order, that such officers should never again be employed in the *zillah* court in any capacity whatever.

April 28, 1814.

In answer to a reference made by the judge of *zillah* Allahabad, the Sudder Dewanny Adawlut, on the 28th April, 1814, stated it as their opinion, that in the case of the expiration of the plaintiff's lease before the summary action for possession and damages is deter-

mined, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages equal to the loss sustained by the plaintiff during the period of his lease should be adjudged.

April 28, 1814.

Bengal 1793.
Reg XLIX
Sec 3
Bengal, 1795
Reg XIV. Sec 2

In answer to a reference made by the judges of the Calcutta court of circuit, the Nizamut Adawlut, on the 19th of May, 1814, stated it as their opinion, that this clause, which requires proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material to the cause, is exclusively applicable to the first case therein mentioned, viz. that of a witness duly summoned and not attending; and that in the two other cases mentioned, viz. of a witness attending and refusing to give evidence, or after having given evidence refusing to sign his deposition, no new proof is to be called for that the evidence of the witness is material.

May 19, 1814.

No. 159.

1793
Reg IV Sec 6
Bengal, 1795
Reg VIII Sec 2,
C. C. P. 1803
Reg III Sec. 7.

A reference having been made by the magistrate of zillah Nuddea, the Nizamut Adawlut, on the 20th May, 1814, determined that the rule contained in Section 10, Regulation XXII. 1793, was applicable to all suspected persons detained by the Magistrate under orders to furnish security.

May 20, 1814.

No. 160.

1793
Reg XXII. Sec 10.
Bengal, 1795
Reg XVII Sec 10.
C. C. P. 1803
Reg XXXV.
Sec. 10.

Extract from a letter from the magistrate of Nuddea, under date the 12th May, 1814.

In the event of his reapprehension, and as a general reference for my future guidance in such cases, I beg leave to request the opinion and orders of the Court of Nizamut Adawlut, whether or not I should warrant, under the provisions contained in clause the first, Section 9, Regulation LIII. 1803, to bring to trial before the court of circuit prisoners of this description (i. e. under requisition of security for good conduct, by order of the magistrate), who escape from jail or from the roads. I am induced to submit this question in consequence of an order passed by the senior judge of circuit at the last sessions, copy of which I take the liberty to transmit herewith. The prisoners in this jail of the abovementioned description are very numerous, and under this order of the senior judge, they are subject in fact to punishment merely nominal for breaking jail, of which offence the prisoner, Juggomohun Biswas, to whom Mr. Wintle's order refers, was convicted before me of having committed.

No. 161.

1803
Reg LIII
C. C. P. 1803
Reg XXII. Sec 10

Extract from a letter to the magistrate of Nuddea, dated the 20th May, 1814.

" As the regulations at present stand, the Court consider the rule contained in Section 10, Regulation XXII. 1793, to be applicable to all suspected persons detained by the magistrate under orders to furnish security.

The Court will, however, take some future occasion of submitting to Government the expediency of a further provision for the punishment of persons of this description,

who may escape from custody, and for whom a sentence of six months imprisonment may appear insufficient."¹

May 20, 1814.

No. 162.

1803
Reg. II. Sec. 8.

On the 23d March, 1814, the senior judge of Bareilly provincial court, requested to be informed,

1st. Were the provisions of the treaty concluded with Nazir Jung, the Nuwaub of Furruckabad, on the 4th June, 1802, declared to extend to the successors of that chieftain?

2d. If they were, how should the courts proceed during the minority of the present Nuwaub, Shoukut Jung, in cases of suits instituted against any of his dependents?

The Sudder Dewanny Adawlut, on the 26th May following, gave it as their opinion, in reply to the 1st question, "that the terms of the treaty concluded with the late Nuwaub Nazir Jung must be considered to extend to his successor Shoukut Jung, the present Nuwaub of Furruckabad;" and in reply to the 2d question, "that all suits properly referrible to him, (the Nuwaub,) should be referred, during his minority, to his guardian or principal manager."

May 26, 1814.

No. 163.

1814
Reg. I. Sec. 13.

In answer to a reference made by the Benares court of appeal, the Sudder Dewanny Adawlut, on the 2d June, 1814, communicated their opinion, that the duties prescribed in the section of the regulation cited in the margin must be levied on all appeals admitted after the 1st May, 1814, on the valuation stated in Section 14, of the said regulation.

June 2, 1814.

No. 164.

1814
Reg. I. 1810.
g. XIII. Sec. 11

On a reference by the acting judge of *zillah* Furruckabad, the Sudder Dewanny Adawlut, on the 21st April, requested the orders of Government, "as to the mode in which the institution fee is to be refunded, under the provisions of Regulation I. 1814, in cases wherein the regulations authorize a return of that fee, either in whole or in part, to the party who may have paid the same." The following is an extract from Government's reply, dated 29th April, (par. 4,) which was communicated for general information, by circular letter of 2d June, 1814.

PAR. 4. It is likewise proposed to revise the rules contained in Section 11, Regulation XIII. 1810, there being grounds to believe, that the return of the whole or of a moiety of the institution fee, so far as respects cases before the *moonsiffs* and *sudder ameens*, has produced exactly the contrary effect from what was anticipated from those provisions. In the mean time, however, the Sudder Dewanny Adawlut is requested to issue a circular order to the courts of judicature, authorizing them to apply to the collectors to pay the whole or a moiety of the value of stamp paper, (on plaints instituted subsequently to the 1st May, 1814, which may be adjusted by *razeenamah*,) to the plaintiffs entitled to receive it in each case. Correspondent instructions will be issued to the Board of Revenue and Board of Commissioners.

June 2, 1814.

* Provided for by Cl. 1, Sec. 5, Reg. XII. 1818.

The judge of zillah Mymensingh, having reported to the Sudder Dewanny Adawlut, that during the month of December, 1813, two causes were instituted under this regulation, but not referred to the collector, as the defendants were not apprehended; that Court, on the 19th June, 1814, returned for answer, that they were not aware of the necessity for the apprehension of a defendant in a suit instituted under this regulation previous to such suit being referred to the collector, but that after summons had been duly served on the defendant the reference in question might consistently be made.

June 9, 1814.

No. 165.

1812

Reg. V Sec. 21.

The judge of zillah Rajeshahye, having been called upon to report the reasons why he had referred no suits instituted under the provisions of this section of the regulation to the collector during the months of December, 1813, and January and February, 1814, stated "that he had referred several soon after the promulgation of the regulation, but that he invariably found, on his proceedings being returned, a petition was presented to the court by the person dissatisfied with the collector's opinion, and the collector not having passed any definite order on the case, he was frequently compelled to go over the whole of the papers, and not only to pass his own decision on the merits of the case, but to combat the reasoning of the collector in cases wherein it differed from his own; in consequence of which he desisted from making the references to the collector." The Sudder Dewanny Adawlut, on the 9th June, 1814, returned for answer, that to authorize the practice followed by the judge, would be virtually to annul the rule, which must be complied with.

June 9, 1814.

No. 166.

1812

Reg. V Sec. 21.

Extract from a letter from the Register of the Nizamut Adawlut, to the Patna Court of Circuit, dated the 6th July, 1814.

PAR. 2. The Court understand the questions referred to them, at the request of the magistrate of Tirhoot, to be,

1st. Whether two judges of the court of circuit were competent, not only to annul the magistrate's order of the 30th September, 1813, but also to order him to proceed in the case to which that order related, in conformity with the first clause of Section 5, Regulation VI. 1813?

2dly. Whether in the cases provided for by the clause above mentioned the magistrate or other officers, before whom the proceedings on an actual or expected affray may have been held in the *foujdaree* court, is required to certify the case to the *dewanny* court, with a view to the inquiry directed in the latter court; or, whether it be at the discretion of the magistrate, or other *foujdaree* officer, to certify the case to the *dewanny* court, or not, as he may think proper?

PAR. 3. On the first point, the Court direct me to observe, that under the authority vested in two or more judges of a court of circuit, by Section 23, Regulation IX. 1807, "to pass such orders as they may deem proper and consistent with the regulations," the two judges of your court, who considered the case in question to be within the provisions of the first clause of Section 5, Regulation VI. 1813, were fully competent to order the magistrate to proceed in conformity thereto.

No. 167.

1813.

Reg. VI. Sec. 5,
Clause 1

1807
Reg. IX. Sec. 23.

1793
Reg. XLIX

4. On the second point, supposing the case to be such as that intended to be provided for by the clause referred to, viz. a case of dispute concerning lands or other premises likely to terminate in a breach of the peace, if not adjusted, and in which neither of the parties may have complained to the *dewanny* court, under the provisions of Regulation XLIX. 1793, or any other regulation in force, relative to cases of dispossession, the Court are of opinion, that the magistrate or other officer presiding in the *fouzdaree* court, is required to certify the case to the *dewanny* court, with a view to the issue of *perwannahs*, and summary inquiry provided for, in the civil court.

July 6, 1814.

No. 168.
1809
Reg. IX. Sec. 9.

On a reference from the commissioner of Chinsurah, through the Calcutta court of appeal, "whether a petitioner be entitled or not to receive the fees paid by him on instituting an appeal from the deputy commissioner to the commissioner of Chinsurah, previously to the enactment of Regulation IX. of 1809;" the Sudder Dewanny Adawlut, on the 13th July, returned for answer, that "understanding the appeal from the judgment of the deputy commissioner, which formed the subject of the reference, was depending before the commissioner prior to the promulgation of Regulation IX. 1809, and was transferred to the court of appeal for decision under the provisions of Section 9, of that regulation, in such case, as the provisions of Regulation IX. 1809, were extended by Section 9, to all depending appeals, and as under Section 8, the appeal in question was not liable to any institution fee, the court concur in the propriety of the order for refunding the amount paid by the appellant."

July 13, 1814.

No. 169.
1814
Reg. I.

In answer to a reference made by the judge of *zillah* Tirhoot, the Sudder Dewanny Adawlut, on the 20th July, 1814, stated it as their opinion, that as the stamp paper before given to the suitors whose indigence would not admit of their purchasing the same was no longer receivable under the provisions of Regulation I. 1814, on their returning the former, they should be furnished with the stamp paper prescribed by that regulation, provided they could assign sufficient cause for the delay.

July 20, 1814.

No. 170.
1814
Reg. I. Sec. 17.

In reply to a reference made by the judge of the city court at Patna, the Sudder Dewanny Adawlut, on the 20th July, 1814, stated it as their opinion, that whenever the plaint could not be written on one sheet of stamp paper, the remainder should be drawn up on paper prescribed for supplements in Section 17, Regulation I. 1814.

July 20, 1814.

No. 171.
1814
Reg I Sec. 19.

In answer, to a reference made by the Calcutta court of appeal, the Sudder Dewanny Adawlut, on the above date declared their opinion, that under the provisions of the section of the regulation in question, all copies of decrees or of other papers transcribed after the 1st May, (1814,) must be upon the stamp paper prescribed by Regulation I. 1814, notwithstanding that the decree or order may have been passed prior to the above date.

July 20, 1814.

Extract of a letter to the Commissioner at Moorshedabad, dated the 27th July, 1814.

2. It appearing from the papers transmitted by you, that Gungaram has been duly served with a summons, and has failed to attend, as promised in his written acknowledgement of the receipt of the summons, the Court remark that for such failure he is liable, under the provisions of Section 6, Regulation IV. 1793, to personal arrest, and fine not exceeding five hundred Rupees.

3. As the witness has evaded the warrant issued for the seizure of his person, the Court are of opinion, that it will be proper to issue a proclamation requiring his attendance within a certain period; and that if he should still neglect to attend within the time limited in the proclamation, you should impose such fine upon him as you may judge proper, not exceeding the amount above stated, and proceed to levy the same by attachment and sale of his property.

With regard to the witness Govind Sukar, the Court remark, that as the summons has not been served upon him, in consequence, as stated in the return made by the *nazir*, of his having quitted his place of abode some time previous to the issue of the summons, the rules contained in the section above cited cannot be considered applicable.

July 27, 1814.

Extract from a letter to the Benares Court of Circuit, under date the 27th July, 1814.

The Court of Nizamut Adawlut having reconsidered the general question, noticed in the 3d paragraph of my letter to you, under date the 16th September, 1813, I am directed to acquaint you, in qualification of the opinion therein expressed, that supposing a judge of circuit, holding a *zillah* or city jail delivery, and revising the proceedings of a magistrate respecting a prisoner ordered to find security for his future good behaviour, to pass a specific order, either confirming that of the magistrate, or limiting the amount or term of the security to be required from the prisoner; the Court are of opinion that another judge of the court of circuit, reviewing the proceedings on the case at a subsequent session, is not competent, under the regulations in force and the construction given to them by the circular order of the Nizamut Adawlut, under date the 8th August, 1807, to reduce the amount of the security fixed by order of the former judge, or in any respect to alter the substance and specific tenor of such order, except in the case expressly provided for by the Court's circular order of the 8th August, 1807, viz. under the provisions of Section 11, Regulation LIII. 1803, when a prisoner required to give security may have been in confinement for a year, and the judge of circuit, on the report of the magistrate, may concur with the latter in opinion, that the prisoner should be released on his *mochulka*, without security.

2. In other cases, wherein the order passed by one judge of a court of circuit, holding a *zillah* or city jail delivery, may appear to another judge to require alteration, the Court are of opinion, that a reference should be made to the Nizamut Adawlut, in pursuance of the regulations and the construction of them already communicated to you in the 2d paragraph of my letter, under date the 14th April last.

o

No. 172.

1793
Reg IV Sec 6.
C C P 1803
Reg III Sec 7.

No. 173.

1803
Reg. LIII Sec. 11.

3. The Court are at the same time of opinion, that an obvious omission in the original order, in such case, which can be supplied without altering the substance of the order, (such as fixing the amount of the security when it has not been already fixed,) may be supplied by a judge of circuit holding a succeeding jail delivery, or by the court at large, in cases brought before the court at the *sudder* station.^{*}

July 27, 1814.

No. 174.

1797.
Reg XI. Sec. 2.
C. C P 1803
Reg XVIII
Section 3.

To the Moorshedabad Court of Appeal, 27th July, 1814.

GENTLEMEN,

The Court of Sudder Dewanny Adawlut, having had before them the papers submitted with your certificate, dated the 23d May last, remark, that the questions proposed for their consideration in the extract from your proceedings of the 10th of that month, are as follows :—

1st. Whether, under the statute 53, George III. chapter 155, it be necessary to require hereafter from British subjects, instituting a suit in the provincial court, the bond prescribed by Section 2, Regulation XI. 1797.

2d. Whether, in the event of the requisition of such bond being still necessary, it should be written on stamp paper.

3d. Whether the bond exhibited by the plaintiff in the suit pending before you having been written in Calcutta upon plain paper, it be necessary to levy from the plaintiffs ten times the amount of the stamp duty, which would have been payable upon such bond, if it had been prepared upon paper bearing the prescribed stamp, previously to your admitting the said instrument to be filed in the cause.

PAR. 2. In answer to the 1st question, I am directed to transmit to you the enclosed extract of a letter from the Advocate General,[†] from which you will observe, that the provisions of the statute above mentioned do not preclude the necessity of requiring the bond prescribed in Section 2, Regulation XI. 1797.

3. With respect to the 2d question, the Court observe, that it has already been determined in the affirmative by their circular instructions, under date the 4th February, 1801.

4. Upon the remaining question, I am directed to acquaint you, that as the bond exhibited by the plaintiff in the suit appears to have been executed in Calcutta, and the regulations establishing a stamp duty do not extend to the town of Calcutta until they

* The whole of the rules relative to prisoners detained for security have been modified by Regulation VIII 1818

† Extract of a letter from the Advocate General, dated 22d July, 1814.

"In answer to your letter of the 13th instant. I have the honor to state, that as the 53 Geo III, Cap 155, Section 107, only gives jurisdiction over British subjects in the three cases therein mentioned, within none of which, unless the first, a demand for costs decreed against them in a *zillah* court can fall, I see no reason for departing from the security required from them when plaintiff, by Section 2 Regulation XI of 1797, but that I do not think a British subject residing above ten miles from Calcutta should be called upon to execute the bond prescribed by Section 3, Regulation XXVIII, 1793, which should be therefore, repealed so far as it concerns that matter."

have received the sanction of the Court of Directors, with the approbation of the Board of Commissioners, as directed by the 98th Section of the statute in question, the Court are of opinion that the bond should be admitted in evidence in the suit, although on plain paper.

July 27, 1814.

Extract from a letter to the Benares Court of Appeal, dated 3d August, 1814.

It appears to the Court to be within the spirit of Section 7, Regulation III. 1797, that an application for a review of a judgment, under a stated difference of opinion between your 1st and 2d judges, should be brought before another judge, when the question may be decided by a majority of voices; I am directed, therefore, to desire you will proceed accordingly.*

August 3, 1814.

The Court, for the information of the judge of *zillah* Burdwan, delivered it as their opinion, on the 2d of August, 1814, that as there was no specific provision in the regulations for compelling native officers of Government in the Judicial Department to deliver over charge of the records of their office, such cases fall within the general provision of Section 21, Regulation III. 1793.

August 3, 1814.

Extract from a letter from the Calcutta Court of Appeal, dated the 28th March, 1814.

"The point for the Court's determination is, whether the court of appeal can legally direct the enforcement of Section 11, Regulation II. 1806, at Chinsurah, when the debt exceeds 5000 Rupees."

Extract from a letter to the Calcutta Court of Appeal, dated the 3d August, 1814.

"Upon the question submitted in your letter, I am directed to observe, that the jurisdiction of your court being restricted, under the provisions of Regulation IX. 1809, to cases wherein the amount or value adjudged or disallowed by the commissioner may be less than 5000 Rupees, the Court are of opinion, that the enforcement of Section 11, Regulation II. 1806, in cases exceeding the above amount, is not within your competency."

August 3, 1814.

In the 8th paragraph of a letter from the judge of Rajeshahye, dated 13th May, 1814, (submitted through the Moorshedabad court,) he requested instructions, "whether copies of papers made for records of court on delivery of the original papers to the parties, can be drawn out and authenticated on plain paper or not." The Court gave it as their opinion, on the 17th August, that the provisions of Section 19, Regulation I. 1814, appeared applicable only to copies of papers authenticated for individuals, and that it was not necessary that copies, merely for records of court, should be written upon stamp paper.†

August 17, 1814.

No. 175. .

1797.
Reg. III Sec. 7.
C. C. P. 1803
Reg. XV Sec. 7.

No. 176. .

1793
Reg. III Sec. 21.
C. C. P. 1803
Reg. II Sec. 17.

No. 177. .

1806
Reg. II Sec. 11.

No. 178. .

1814.
Reg. I. Sec. 19

* But see the rules contained in Section 3, Regulation II. 1825.

† Superseded by Act III Schedule B, Reg. X. 1829.

No. 179.

Reg I Sec 15.
1814

In reply to a query put by the Dacca court of appeal in the 7th paragraph of their letter of 9th May, they were informed on the 17th August, "that the Court were of opinion, that the copies of decrees in regular suits, if filed with petitions of appeal, (whether the appeal be special or not.) must be considered liable to the rule contained in Section 15, Regulation I. 1814, but that if the copies of decrees be not filed, they will not fall under that rule."

August 17, 1814.

No. 180.

Reg I
1814.
Secs 13 and 14

The judge of *zillah* Mirzapore, in the 4th paragraph of his letter, dated 23rd May, requested to know, "in cases that were pending before the register and *sudder aumeens* previously to the 1st May, and which may be subsequently appealed to the judge, is the value of the property to be assumed, as directed by the first and second clauses of Section 14, Regulation I. 1814, or are these clauses to affect those persons only, who may file suits in the register's and *sudder aumeen's* courts, subsequently to the 1st May, and the appeal of former ones to be considered as a continuation of the original investigation?" The Sudder Dewanny Adawlut were of opinion, that the provisions of Sections 13 and 14, Regulation I. 1814, are applicable to all appeals preferred subsequent to the 1st May last, the date fixed for the operation of that regulation.

August 17, 1814.

No. 181.

Reg I Sec. 14,
1814
Clause 4.

In consequence of doubts excited by the expression "under the existing rules," used in this clause the judge of *zillah* Jungle Mohauls, on the 1st August, requested instructions, whether the calculation of the fee receivable is to be made on the amount of the sum claimed, or on the value of the stamp paper for the plaint. He was informed in reply, that the Sudder Dewanny Adawlut understood the expression, "existing rules," to relate to the proportion of fees receivable by the register and native commissioners, on cases decided by them, or adjusted before them by the *rozzennamah* of the parties; and were of opinion, that the amount receivable by the register and native commissioners, in such cases, should be calculated on the stamp duty actually paid in the cause, under Section 13, Regulation I. 1814.

August 17, 1814.

No. 182.

Reg I.
1814.
Sections 15 and 16.

On a reference from the judge of *zillah* Bundelcund, dated 13th May, (paragraph 2.) "whether parties may be allowed to bring their own witnesses without making any application to the court, or whether it is intended that an application on stamp paper shall be made for every witness, whether summoned by the court, or offered to be produced by the parties," the Sudder Dewanny Adawlut, (adverting to the original object, declared in the preamble to Regulation VI. 1797, for the fee on summonses to witnesses, established by the first clause of Section 5, of that regulation, and the provisions of Sections 15 and 16, Regulation I. 1814, appearing to have been substituted for that clause,) gave it as their

opinion, on the 17th August, 1814, "that no witness could be examined in a regular suit without a *durkhaust*, as prescribed by Section 16 of Regulation I. 1814."

A similar construction given on the same date to a reference from the judge of Mrzapore, dated 25th May.

August 17, 1814.

On a reference from the judge of *zillah* Chittagong, dated the 21st May, (last paragraph,) the Court gave it as their opinion, on the 17th August, 1817, "that as the courts of the registers, *zillah* and city judges, provincial courts, and the Sudder Dewanny Adawlut only are specified in these sections, the provisions in them could not be considered applicable to the native commissioners."*

August 17, 1814.

In reply to a reference from the judge of Cawnpore, dated 3d August, for sanction to order the copies of decrees to be written upon Culpee paper, the Sudder Dewanny Adawlut informed him, on the 17th August, 1817, "that as the regulations in force did not require the copies of decrees prepared for records of court to be drawn up on English paper, they (under the circumstances stated by the judge) were not aware of any objection to the using for that purpose Culpee paper."†

August 17, 1814.

In reply to the 10th paragraph of letter from Dacca court of appeal, dated 9th May, the Court, on the 17th August, 1814, observed, "that the whole of Section 16, Regulation VI. 1797, had been rescinded by Section 2, Regulation VII. 1800, and that under the first clause of Section 5 of the latter regulation, marriage settlements (*kabeen namahs*) ought to have been executed on stamp paper; at all events, that they are obviously included in the provisions of Section 11, Regulation I. 1814."‡

August 17, 1814.

In reply to the following query by the judge of city Patna, "Whether a plaintiff who has not instituted his suit as a pauper, may afterwards, in the course of it, be admitted to proceed as a pauper, on proof of his poverty;" the Court of Sudder Dewanny Adawlut, on the 31st August, 1814, acquainted him, "that as in the case supposed, the plaintiff must have already paid the institution fee, as well as given security for *rakeel's* fees, and costs of suit, the Court are of opinion, that he cannot be allowed to prosecute the suit *in forma pauperis*; but that in the event of an appeal from the decision on the original suit, there would be no objection to his being admitted as a pauper on the appeal, on producing satisfactory proof of his poverty."§

August 31, 1814.

No. 183.

1814
Reg I Secs. 15, 16,
17, 18 and 19.

No. 184.

1814.
Reg I Sec 19

No. 185.

1814
Reg I Sec 11
1797
Reg VI Sec. 16.
1800.
Reg VII Sec 5
Cl 1.

No. 186.

1793
Reg XLVI
1795
Reg XXIII
1803
Reg XIV
1814
Reg. XXVIII.

* But see the subsequent rules contained in Regulation X. 1829, Schedule B.

† Superseded by Clause 2, Section 16, Regulation XXVI. 1814

‡ See Section 26, Regulation XXVI. 1814.

§ The Regulations first quoted in the margin have been rescinded by Section 2, Regulation XXXVIII 1814, but the construction is equally applicable to the provisions of the latter Regulation.

No. 187.

1797
Reg. VI Sec 3.
1803.
Reg. XLIII
Section 3
1814
Reg. I. Secs 2, 13,
14, 15, 16 and 17

Questions submitted to Government, on the 17th August, 1814, and circulated for general information on the 7th September, 1814.

“Whether Section 3, Regulation VI. 1797, and Section 3, Regulation XLIII. 1803, which are not rescinded, with the other sections of those regulations, by Section 2, Regulation I. 1814, are to be considered still in force, with respect to the institution fee to be paid on suits instituted before native commissioners, vested with the power of *moonsiff*, or whether the fee prescribed in the sections abovementioned was meant to be superseded by the rule for stamp paper, prescribed in Section 13, Regulation I. 1814, supposing such rule applicable to suits instituted before the *moonsiffs*? ”

2d. “Whether Sections 13, 14, 15, 16, and 17 of Regulation I. 1814, are meant to be restricted to regular suits and appeals, or to be extended to any, and what descriptions of summary suits? ”

3d. “What stamp paper is to be used under Section 11, Regulation I. 1814, for deeds of contract, partnership, agreement, security or engagement, when the deed may not relate to any specific sum or value, so as to admit of the stamp paper being regulated by the table contained in that section.”

In reply, the Court were informed on the 30th August, that “the Vice-President in Council was of opinion, that Section 3, Regulation VI. 1797, and Section 3, Regulation XLIII. 1803, should be considered to be in full force and effect for the present; but that in passing Regulation I. 1814, it was fully intended to substitute the stamp duty for the commission at present paid on suits instituted before native commissioners, which arrangement will accordingly be adopted the first convenient opportunity.”*

The Court were also informed, that Sections 13, 14, 15, 16, and 17 of Regulation I. 1814, were only intended to apply to regular suits and appeals;† and that his Excellency in Council was not prepared to furnish the Sudder Dewanny Adawlut with any specific reply to the third object of their inquiries, but the question was in a course of discussion, and that a further communication would be made to the Court on the subject hereafter.‡

September 7, 1814.

No. 188.

1809.
Reg. VII Sec 7
1814.
Reg. I Sec. 18

Extract from a Letter from the Register of the Sudder Dewanny Adawlut, to the Chief Secretary to Government, dated the 7th September, 1814.

“As Section 7, Regulation VII. 1809. whereby the judges [of the *zillah* and city courts] were directed to receive all applications of the collectors for the apprehension or confinement of defaulters, or on any other subject relating to the public revenue, upon common paper without a stamp, has been rescinded by Section 2, Regulation I. 1814, and

* See Section 49, Regulation XXIII. of 1814.

† See Section 20, Regulation XXVI. 1814

‡ See Regulation X. 1829, Schedule A, § 3.

no similar provision is included in the latter regulation ; the Court are of opinion, that all applications of the nature referred to, must be upon stamp paper, under the rule contained in Section 18, Regulation I. 1814, until otherwise provided for by some new regulation."*

September 17, 1814.

On a reference from the magistrate of *zillah* Rungpore, the Court informed him, on the 7th December, 1814, that police *darogahs* do not at present possess authority to compel the appearance before them of persons acquainted with the commission of offences : but that it is the Court's intention to submit to Government a regulation to invest the officers of police with such authority.

December 7, 1814.

Extract from a letter to the Dacca Court of Appeal, under date the 14th December, 1814.

The Court entirely concur with you in opinion, that in the case in question, it was clearly the duty of the judge of Mymensing, under clause first, Section 5, Regulation II. 1806, not to have proceeded to the attachment of the defendant's land till he had satisfied himself by proof that sufficient grounds, as set forth in the above mentioned clause, for requiring *malzamny* security from the defendant did actually exist ; and until the defendant had failed to furnish such security within a reasonable time, to be allowed for that purpose.

2. The Court direct me further to observe, that the second clause of the section above referred to, on which Mr. Ewer appears to rest his opinion that it is discretionary with the judge to attach the land in dispute without adopting the previous measures above referred to, is merely subsidiary to the first, and explanatory of the mode in which attachments of land that may become necessary, under that clause, shall be made.

December 14, 1814.

In reply to a reference made by the register and assistant to the magistrate of the Patna city court, through the judge and magistrate, the Court determined, on the 18th January, 1813, that a register was not competent, under the rule contained in the first clause of Section 5, Regulation VI. 1813, to proceed upon a case certified to the *dewanny* court by himself as assistant to the magistrate, without an order of reference from the judge, in conformity with Section 13, Regulation II. 1805. And that an assistant to a magistrate is not competent to pass an order of commitment, in cases wherein the offence may appear to require a more severe punishment than he is authorized to adjudge, but must submit his proceedings to the magistrate, under Section 20, Regulation IX. 1807.

January 18, 1815.

No. 189.

1807.

Reg IX Sec. 17.

No. 190.

1806.

Reg II. Sec 5,
Clauses 1 and 2.

No. 191.

1813

Reg. VI. Sec 5,
Clause 1
1805.
Reg II. Sec. 13
1807
Reg. IX Sec. 20.

* Superseded by Section 21, Regulation XXVI 1814.

No. 192.

1809
Reg. VIII Sec 5.
Cl 5

On the 18th January, 1815, the Court declared, "that the joint magistrate of Tirhoot, at Monghyr, was not authorized, under clause fifth, Section 5, Regulation VIII. 1809, in adjudging a *bukundauz*, from whose custody a prisoner escaped, to pay a fine equal to three months' salary," and directed restitution of whatever sum might have been levied exceeding the amount of salary for one month.

January 18, 1815.

No. 193.

1812
Reg III. Sec. 6.

On the 18th January, 1815, the Court declared, that the 6th Section of Regulation III. 1812, was applicable only to *chowheedars* or other description of village watchmen, and the magistrates not being empowered by the regulations before in force, to inflict corporal punishment, except in cases of theft, they judge it proper, in consideration of stripes inflicted by the magistrate of Tirhoot on a *bukundauz*, to remit the remainder of a sentence of imprisonment to which he had also been sentenced.*

January 18, 1815.

No. 194.

1814
Reg XXIV
Sec. 12, Clause 3d.

Extract from a letter to the acting Secretary to Government, in the Judicial Department, under date the 20th January, 1815.

4. In answer to the question contained in the 2d paragraph of your letter above acknowledged, I am directed by the Court to observe, that under the terms of the third clause of Section 12, Regulation XXIV. 1814, which provide only for "stationing the register or registers at any place or places within the jurisdiction of a *zillah* and city court of *dewanny adawlut*," the Court are of opinion, that the powers, ordinary and special, of the registers stationed at certain places within the jurisdiction of particular *zillah* or city courts of *dewanny adawlut*, must necessarily be restricted, as the regulation now stands, to the cognizance of civil suits which are cognizable, under the general regulations, by the *zillah* or city *dewanny adawlut*, within the jurisdiction of which they are respectively stationed.

January 20, 1815.

No. 195.

1807
Reg II

Extract from the proceedings of the Court of Nizamut Adawlut, under date the 7th February, 1815, on the trial of Boochnoo Sing and others, for forgery.

The Court observe, on the subject of the last paragraph of the letter from the 3d judge of the Benares court of circuit, that although the offence of issuing forged deeds, is punishable by the Mohummudan law, it is not liable to the penalties for forgery prescribed by Regulation II. 1807.†

February 7, 1815.

* But see Section 9, Regulation XIV. 1816.

† See Section 10, Regulation XVII. 1817.

Extract of a letter from the Judge of Zillah Nuddea, under date the 24th February, 1815.

Query 1st. Whether in suits cognizable by the *moonsiffs*, the origin of the cause of action, in cases of bonds or other instruments, is to be reckoned from the actual date of the execution of such instrument, or from the date on which the payment has become due, as provided for and specified in the bond or other instrument, and the defendant has failed to discharge it, and to make good his engagement?

Query 2d. Whether the defendants having admitted the truth of the demand, by a written acknowledgment to that effect, can be construed to constitute a new ground of action, (cognizable by a *moonsiff*;) although the original cause of action is beyond the period of one year?

Extract of a letter to the Judge of Zillah Nuddea, in reply to the above, dated 1st March, 1815.

In reply to the first question submitted by you, I am desired to inform you, that it is the opinion of the Court, that in the case of a bond or other instrument for the payment of money, the cause of action cannot be considered to arise previous to the money becoming payable.

In answer to the second question referred by you, I am further directed to communicate to you the opinion of the Court, that a simple acknowledgment to the truth of the demand would not be sufficient to constitute a new ground of action, so as to bring within the cognizance of a *moonsiff* a suit, the prescribed period for instituting which had elapsed.

March 1, 1815.

Extract of a letter from the Judge of Zillah Nuddea, under date the 21st Feb. 1815.

2. Few instances occur in which a party appears and prefers his plaint in person, and consequently there is generally a necessity of appointing an authorized *vakeel* attached to the Judge's court to file the plaint, whatever may be the amount of the suit.—The *vakeel*, thus entertained, seldom performs any other act in the suit, except putting his name to the plaint, and for which he has generally received a fee of four Annas. If the suit has been referred to the register or a *sudder ameen*, a *vakeel* attached to their respective courts has afterwards been entertained, so that in all referred cases the plaintiff or appellant, if not himself present, has had to entertain two *vakeels*, one to present his petition of complaint, and the other to conduct the prosecution.

3. By Section 34, Regulation XXVII. 1814, *vakeels* are entitled to receive a fee of four Annas for presenting a miscellaneous petition or application, if it does not relate to any suit depending in court, wherein the person, in whose behalf they petition, is a party. This proviso, I imagine, must be presumed to have reference to the cases mentioned in the preceding paragraph, and the fee of four Annas, hitherto received for filing a plaint, does not appear to be compatible with the existing regulations. Moreover, by clause first,

No. 196.
1814
Reg. XXIII.
Sec 13

No. 197.
1814
Reg. XXVII.
Secs. 23 and 34.

Section 23, Regulation XXVII. of 1814, a *vakeel* is not competent to perform any act in a suit, until the party employing him has deposited in court the full and regular amount of his fees.

Extract of a letter to the Judge of Zillah Nuddea, in reply to the above, dated the 1st March, 1815.

2. If the plaintiff in a regular suit, instead of preferring his plaint in person, employ a *vakeel* to prefer it, he must deposit the full fee, in conformity with Section 23, Regulation XXVII. 1814.

3. In the event of the suit being referred to a register or *sudder ameen*, such deposit must be kept for the pleader employed to prosecute the suit in the court of the *sudder ameen* or register.

4. If such pleader be not the *vakeel* employed to file the plaint, the Court are of opinion, that under the provisions of Section 35 of the above regulation, the judge may award to the latter four Annas, or such fee as he may consider adequate, under the limitation prescribed in the section referred to; but it appears to the Court, that in general the fee of four Annas will in such cases be sufficient.

March 1, 1815.

No. 198. *Extract from a letter from the Benares Court of Appeal, under date the 28th Feb. 1815.*

Reg VI Sec. 23. ^{1795.}
Reg XXVII. ^{1803.}
Sec. 23. ^{1808.}
Reg. XIII. Sec. 11. ^{1808.}

We request to be instructed by the Sudder Dewanny Adawlut, whether an appeal preferred to this Court, under Section 23, Regulation VI. 1795, or Section 23, Regulation XXVII. 1803, against a decision in the *zillah* court, decreeing the forfeiture of an estate to Government, for the offence specified in Section 22 of those regulations, is to be received as a regular appeal, upon payment of the stamp duty under Regulation I. 1814, and deposit of a pleader's full fee under Section 23, Regulation XXVII. 1814; or may be admitted as a summary appeal, upon the paper prescribed by Section 18, Regulation I. 1814, and on deposit of one-fourth of a pleader's full fee, as prescribed in Section 32, Regulation XXVII. 1814.

2. We further request to know, whether it is competent to the court of appeal to take security from the appellant to stay the execution of the *zillah* decree, under the discretion vested in it by Section 11 of Regulation XIII. 1808.

Extract of a letter to the Benares Court of Appeal, in reply to the above, dated the 8th March, 1815.

2. In reply to the first question submitted by you, the Court desire me to communicate their opinion, that an appeal preferred to your Court, under Section 23, Regulation VI. 1795, or the corresponding Section of Regulation XXVII. 1803, against a decision in the *zillah* court, decreeing the forfeiture of an estate to Government for the offence specified in Section 22 of those regulations, is to be received as a regular appeal under the general rules applicable to regular appeals.

3. In answer to your 2d Question, I am desired by the Court to inform you, that they are of opinion, that the provincial court is competent to stay the execution of the *zillah* decree, under the provisions of Section 11, Regulation XIII. 1808.

March 8, 1815.

The Court informed the Bareilly Provincial Court, on the 29th March, 1815, that the amount to be deposited for Vakeels' fees, under Section 23, Regulation XXVII. 1814, instead of the security required by the regulations before in force, must be made in all cases of *vakalutnamahs*, filed subsequently to the 1st of February, 1815, in which security would have been demandable under the rules in force before that date.

March 29, 1815.

At the second session of 1814 for *zillah* Ramghur, the senior judge of the Patna court of circuit reported a case in which the attendance of the prosecutor and principal witnesses could not be procured, they having returned to their homes in the Nawaub Vizier's territories some time before the sessions. He was informed in reply, that the case should again be brought on at the next sessions, when the prisoners should be acquitted, if the magistrate should still be unable to lay before the judge of circuit evidence sufficient for their conviction, although they might be held to security for their future behavior, previous to their release, if, on consideration of the proceedings held in the case, there should appear sufficient grounds to warrant that measure.

March 29, 1815.

Extract of a Letter to the Benares Court of Appeal, dated the 18th April, 1815.

"The Court concur with you in opinion, that as a general rule of practice, all applications for a review of judgment should be brought before the judge or judges, by whom the judgment may have been passed; excepting the case noticed by you of the final removal of such judge or judges from the court; or when material inconvenience may be likely to arise, from the long absence of the judge who has passed the decision from the *sudder* station."*

April 18, 1815.

Letter from Benares Court of Appeal, dated the 12th April, 1815.

We refer the enclosed papers for the consideration of the Sudder Court respecting the proper construction of Section 17, Regulation I. 1814.

PAR. 2. The first is an order passed by the first and third judges, on the 1st of December, 1814, in enforcement of the section above cited.

No. 199.
1814
Reg. XXVII.
Sec. 23

No. 200.
1793
Reg. IX. Sec. 49
1803
Reg. VII. Sec. 17.

No. 201.
1814
Reg. XXVI.
Sec. 4.

No. 202.
1814
Reg. I. Sec. 17.
Reg. XXVI.
Sec. 20.

* Since made law by Regulation II. 1825.

3. The other is a petition from the pleaders of the court, in substance, that the petition for which a tax of four Rupees is to be paid, must mean a petition which shall contain arguments or other matter relative to the merits of the suit or appeal, and showing why it should be decreed or dismissed, and cannot be meant to extend to every little miscellaneous matter growing out of every case, an enumeration of many of which is subjoined.

4. With what is urged by the *vakeels*, the second judge entirely agrees. The tax, he conceives, was meant to check the former practice of going beyond the prescribed set of pleadings under the name of a petition, and was never meant to apply to collateral and miscellaneous matters, which, though they grow out of the case, have no immediate connection with its merits. Such petitions, he thinks, might be received on one Rupee paper, under the 18th Section, or even the object of them be moved verbally by the pleaders or parties without any petition at all. To present them on four Rupees paper must be felt as an intolerable expense and grievance.

Extract of a Letter to the Benares Court of Appeal, in reply to the above, dated the 26th April, 1815.

Considering Section 17, Regulation I. 1814, with the explanation of it contained in Section 20, Regulation XXVI. 1814, the Court are of opinion, that all petitions filed in original regular suits, or in appeals, regular or special, must be written on the stamp paper prescribed in the former.*

April 26, 1815.

No. 203.
1812
Reg. V. Sec. 21.
The Court decide that all suits instituted under Section 21, Regulation V. 1812, must be referred to the collector for report, provided he be on the spot. But that the reference is not necessary if the collector be absent from the *sudder* station, the object being to expedite the decision in such suits.

May 18, 1815.

No. 204.
1793.
Reg. IX Sec. 16.
1797.
Reg. IV Sec. 7,
Clause 2
C. C. P. 1803
Reg. VI. Sec. 16.
Extract of a Letter to the Calcutta Court of Circuit, dated the 18th May, 1815.
The Court observe, that the rules originally prescribed in Section 16, Regulation IX. 1793, that all examinations and depositions are to be written in the language in which the deponents are most conversant, is superseded by the subsequent provision of clause 2, Section 7, Regulation IV. 1797.

This clause, to which Mr. Pattle seems not to have attended in issuing his original orders to the magistrate, and which, though expressly referred to by Mr. Gardiner in the 2d paragraph of his letter of the 18th ultimo, he appears from his letter to this Court still to overlook, prescribes that examinations before the courts of circuit and the *zillah* and city magistrates are to be taken down in the language and character in which the person examined may desire to have the same recorded.

The Court understand, that Mr. Gardiner affords to all persons examined before him the option directed to be given to parties and witnesses in the above clause, and that he also makes it a general rule, in the event of persons brought before him on criminal

* Superseded by Acts 7 and 8, Schedule B, Reg. X. 1829.

charges confessing their guilt, to record such confessions in the language with which such persons are most conversant, and the Court are of opinion, that under the rule above cited, on persons examined before him not availing themselves of such option, the magistrate is clearly warranted in recording their examinations in the Persian language.

This construction, the Court observe, appears to have been generally followed by all the courts of criminal judicature within the presidency, and, as far as they can judge from such of the proceedings held before Mr. Pattle as have come to the notice of the Nizamut Adawlut, to have guided the practice of that gentleman himself; and the Court entertain great doubts, whether any general restriction on the practice of recording examinations of parties and witnesses in the Persian language, beyond those above noticed, could be adopted without very seriously interrupting the despatch of public business.

This inconvenience, the Court remark, appears, from the letters of the magistrate of the 24-Pergunnahs, to have resulted in a very serious degree from the orders of Mr. Pattle, and the Court are of opinion, that that gentleman was not warranted in issuing instructions of a general nature for the conduct of the magistrate; that power being expressly reserved to the Nizamut Adawlut, by Section 3, Regulation X. 1796. The Court therefore desire, that Mr. Pattle will avoid such procedure in future, and that he will address the Nizamut Adawlut whenever any of the magistrates within his jurisdiction may appear to require any general instructions for their guidance.

May 18, 1815.

Extract of a letter to the Bareilly Court of Circuit, dated the 25th May, 1815.

PAR. 2. From these papers, the Court observe, that Sobha Rai, on the 14th March 1815, preferred a petition to your senior judge, (when holding a sitting of the court of circuit at the *sudder* station, under the provisions of Section 12, Regulation XXV. 1814,) against a sentence passed on him by the magistrate of *zillah* Cawnpore on the 25th November 1814, alleging that the magistrate had, in passing the said sentence, exceeded his legal competency, and praying that the proceedings might be sent for and the sentence annulled; but that your senior judge, deeming the sentence legal, rejected the petition.

3. The Court are of opinion, that such decision of your senior judge was clearly final to its extent, under Sections 12 and 13, Regulation XXV. 1814, and could be set aside only by this Court.

4. In expressing this opinion however, the Court desire, not to be understood as determining that a court of circuit collectively, or a single judge exercising the powers vested in him by the sections cited, can never call for proceedings or information, which a former court has, on a particular occasion, refused to call for; but merely that proceedings cannot be required in the same case, upon the same grounds and for the same purposes, which a former competent court may have already decided not to warrant the interposition of the court.

5. Viewing the case submitted by you in this light, and understanding the grounds upon which your fourth judge deemed the requisition of the proceedings on the trial of Sobha Rai proper, to be the same which the senior judge had previously negatived, the Court must think the reference to your second judge of Sobha Rai's case irregular, and the order

1796
Reg. X Sec. 3.
C. P. 1803.
Reg. XXII.
Sec. 3.

No. 205.

1814
Reg. XXV.
Secs 9, 12 13 & 14

proposed to be passed by your second and fourth judges, for bailing the said person and calling for the proceedings with a view to revise the sentence, invalid; and the Court accordingly annul the same.

6. The Court are further of opinion, that the reference made to your second judge, whilst absent on the circuit, was not warranted by any part of Sections 9 and 14, Regulation XXV. 1814; the question on which the sentiments of the second judge were required being evidently of a judicial nature.

Reg IX Secs 33
and 39

1810
7. On the general point of magistrate's competency to award the punishment which he is empowered to adjudge by Sections 33 and 39, Regulation IX. 1810, against the same person, on each separate conviction of repeated offences, the Court are of opinion, that in strictness a magistrate is so competent. But, as it appears to the Court that inconvenience may result from such powers, they propose to suggest a provision to Government for defining and limiting it in this and other cases of a similar description.*

May 25, 1815.

No. 206.

Reg II Sec 6
1799
1807
Reg IX. Sec 19

Extract from a letter to the Calcutta Court of Circuit, dated the 25th May, 1815.

PAR. 3. In the case of Gopaul, the Court direct me to observe upon the objections made by you to the legality of the sentence passed by the magistrate of the suburbs of Calcutta, that the rule contained in Section 6, Regulation II. 1799, which provides that guards, who may appear on the magistrate's inquiry to have been guilty of connivance or other criminality in the escape of prisoners, shall be committed for trial before the court of circuit, having been passed antecedently to the extension of the magistrate's powers by Section 19, Regulation IX. 1807, the Court are of opinion that if the magistrate, under the general powers vested in him by the latter regulation, should deem the punishment which he is thereby authorized to adjudge to be adequate to the offence, he is competent to dispose finally of the case, without commitment to the court of circuit.

May 25, 1815.

No. 207.

Reg I Sec 19
1814
Reg. XXVI
Sec. 16, C 3

1814.
Reg I
Secs. 11 and 18.

Extract of a Letter to the Bareilly Court of Appeal, dated the 1st June, 1815.

PAR. 2. The Court observe, that when original documents which have been filed in court are delivered up to parties, the copies of such documents kept as records of court need not, under the explanation contained in clause third, Section 16, Regulation XXVI. 1814, be written upon stamp paper.†

3. When authenticated copies of the legal documents specified in Section 11, Regulation I. 1814, are required as legal vouchers to be exhibited instead of the originals, the Court are of opinion, that the copies must be written on the same stamp paper as the originals, in conformity with Section 18, Regulation XXVI. 1814, whether prepared by a *cauzee* or *mooftee*, or by any other authorized person.

June 1, 1815.

* Provided for by Regulation VI. 1824.

† But see Regulation X. 1829, Schedule B. S. 3.

Letter to the Judge of City of Benares, dated the 1st June, 1815.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 17th ultimo, relative to a refund of the stamp duty, substituted for the institution fee, in cases decided in favour of the plaintiff on the acknowledgement of the defendant, without investigation of the merits.

2. The Court observe, that, in such cases, where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by *razeenamah*, in which case the provisions in force for the return of the institution fee, or the stamp duty substituted for it, in suits adjusted by *razeenamah* would of course be applicable.

3. But the Court are of opinion, that the existing regulations do not authorize a return of the institution fee, or of the stamp duty substituted for it, in the case stated by you, without a *razzenamah*.

June 1, 1815.

Letter to the Judge of Zillah Mymensing, dated the 1st June, 1815.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, relative to the payment of the fees of pleaders, in a case decided in favour of the plaintiff, on the acknowledgement of the defendant without investigation of the merits, as well as without a *razeenamah* being filed, so as to bring it within the provisions of Section 31, Regulation XXVII. 1814.

2. The Court observe, that in such cases, the claim of the plaintiff not being disputed by the defendant, it may be generally expected, a *razeenamah* will be filed, when the second clause of Section 31, Regulation XXVII. 1814, would of course be applicable.

3. But if not, and the suit be allowed to proceed to a judgment in favour of the plaintiff, the Court are of opinion, that the *rahels* are entitled to the full amount of the established fee: subject, of course, to the provisions of Regulation XXVIII. 1814, in suits of paupers.

June 1, 1815.

Letter to the Magistrate of Cawnpore, dated the 8th June, 1815.

I am directed by the Nizamut Adawlut, to acknowledge the receipt of a letter from you, dated the 8th ultimo, with its enclosures, relative to a difference of opinion between yourself and Mr. Middleton, the joint magistrate of Allahabad and Cawnpore, as to the competency of the latter to comply, of his own authority, with an application from the police *darogah* of Bindky for leave of absence.

2d. It not appearing from the papers transmitted by you, that the police establishment of the *thanah* in question, or of any other *thanah* within the limits of Mr. Middleton's jurisdiction as joint magistrate of your district, has been placed by order of Government under his immediate authority, in conformity with Section 11, Regulation XVI. 1810, the Court observe, that the whole of the native officers composing those establishments continue, as usual, under your control as magistrate of the district, and that consequently Mr. Middleton exceeded his competency in the instance referred to.

3d. You are desired to acquaint him accordingly.

June 8, 1815.

No. 208.

1810
Reg. XIII
Sec. 11, C. 1

No. 209.

1814
Reg. XXVII.
Sec. 31

No. 210.

1810.
Reg. XVI Sec. 11.

No. 211.

¹⁸¹⁴
Reg. XXVI.
Sec. 15, C. 5

Letter to the Acting Judge of Zillah Allahabad, dated the 15th June, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 26th ultimo, with its enclosure from the register of your district stationed at Futtehpore, and in reply to acquaint you, for Mr. Middleton's information, that under the provision of clause fifth, Section 15, Regulation XXVI. 1814, and the general regulations in force, the Court are of opinion, that registers are fully competent, and required, to execute their own decrees under the same rules as are applicable to the execution of decrees by the *zillah* judge.

June 15, 1815.

No. 212.

¹⁸¹⁴
Reg. XXIII.
Sec. 49, C. 2.
Reg. XXI.
Sec. 25, C. 1.

Letter from the Judge of Zillah Agra, dated the 27th May, 1815.

Clause second, Section 49, Regulation XXIII. 1814, prescribes, that the *moonsiffs* shall be entitled to receive the full value of the stamp paper on which the plaint may have been written, on every suit that may be adjusted before them by *razeenamah*; and clause first, Section 25, Regulation XXVI. 1814, confirming the rule contained in Section 11, Regulation XIII. 1810, provides for the whole or part of it being paid to the party who, by filing the *razeenamah*, may have entitled himself to it.

It would appear from the above, that Government are to be twice charged with the value of the stamp paper in cases adjusted by *razeenamah*, but having doubts whether this interpretation of the rules above quoted be correct, I beg leave to solicit the instructions of the Court of Sudder Dewanny Adawlut on the point.

Letter to the Judge of Zillah Agra, in reply to the above, dated the 15th June, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 27th ultimo, and to acquaint you that your construction of the provisions therein cited appears to the Court to be perfectly correct.*

June 15, 1815.

No. 213.

¹⁸¹³
Reg. VI. Sec. 5.
Clause 3.

Extract of a letter to the Acting Judge of Zillah Tirhoot, dated the 30th June, 1815.

As no provision is made by clause third, Section 5, Regulation VI. 1813, for delegating to the collector the power of appointing a manager to disputed lands placed under attachment by order of the *zillah* court, such appointment, in the cases referred to in that section, can only take place from the *zillah* court.

June 30, 1815.

No. 214.

¹⁸¹⁴
Reg. XXVII.
See 31.

Extract from a letter to Dacca Court of Appeal, dated the 6th July, 1815.

The provisions of Section 31, Regulation XXVII. 1814, must be deemed applicable to all suits, whenever instituted, which may be withdrawn or dismissed on default after the 1st February, 1815, the date fixed for the operation of the regulation.

July 6, 1815.

* See No. 260, page 90.

Extract from a letter to the Magistrate of the Suburbs of Calcutta, dated the 6th July, 1815.

No. 215.

1815
Reg. XIII.
Sects. 7 and 16.

PAR. 2. The instructions proposed by Mr. Barwell to be issued to the persons appointed under Section 7, Regulation XIII. 1813, not being warranted by that regulation, the Court do not consider it proper to sanction them.

3. The Court observe, that the nature and extent of the powers intended to be exercised by the persons nominated under the section above cited, together with the purposes of their appointment, are fully and particularly described in the *summons* which is directed to be granted to them by Section 16 of the regulation in question.

4. The Court are of opinion, that it will be sufficient to enforce a strict observance of the rules therein prescribed, and to restrain the persons to whom *summons* may be granted from any acts not expressly authorized by the regulation.

July 6, 1815.

On the 27th July, 1815, the judge of *zillah* Gorruckpore was informed, in reply to an application for authority to review a decision of the register, "that the provisions of clause second, Section 4, Regulation XXVI. 1814, being restricted to cases decided by the provincial, *zillah*, and city courts, the Court of Sudder Dewanny Adawlut do not consider themselves authorized to comply with the application for a review in this case." The Court at the same time observed, "that an appeal from the register's decision to the *zillah* judge might of course be still admitted, under the provisions for such appeals, sufficient reason being assigned for the delay."

No. 216.

1814.
Reg. XXVI.
Sec. 4, C 2.

The terms of the clause referred to in the margin apply to "regular suits," but the Court decided that the spirit of the rule is also applicable to "summary suits," in letters to the acting judge of *zillah* Furruckabad, dated 15th March, 1816, and the register in charge of *zillah* Bundelkund, dated 20th April, 1818.

July 27, 1815.

Letter to the Marschedabad Court of Circuit, dated the 27th July, 1815.

No. 217.

1811
Reg. I. Sec. 7.

I am directed by the Nizamut Adawlut, to acknowledge the receipt of a letter from your late fourth judge, under date the 20th ultimo, requesting the instructions of this Court, respecting the mode of proceeding against certain persons charged with knowingly receiving stolen property, the theft having been committed in Calcutta.

2. In reply to the questions submitted by Mr. Oswald, I am directed by the Court to inform you, that the offence of receiving stolen goods being under Section 7, Regulation I. 1811, not an accession to the theft, but a distinct offence, the person committing it may be brought to trial without the conviction of the thief; and that therefore, in the case in question, the record of the conviction of Korakoo is not essential to the proof against the receivers of the property stolen by him, if the fact of the theft, and the knowledge of the prisoners that the goods were stolen, can be established by other evidence.

3. The Court further observe, that on general principles, and as far as they are informed, under the provisions of the Mohammedan law of evidence, the record of the conviction of a person charged with theft is not conclusive proof against an alleged

receiver of stolen goods to prove the theft, if the latter desire to controvert the propriety of the conviction, and produce evidence to negative the fact of a theft having been committed.

4. In reference to the circumstances of the particular case stated by Mr. Oswald, the Court have desired me to add, that the receipt of *money* stolen, though the offence may be punishable under the Mahomedan law, does not appear to come within the provisions of Section 7, Regulation I. 1811, relative to persons guilty of receiving "stolen goods, cattle, jewels, or effects."

July 27, 1815.

No. 218.

¹⁸¹¹
Reg. I Sec 3,
C 3.
¹⁸¹⁴
Reg. XI.
Sec. 2, C. 4.

Letter from the third Judge of the Dacca Court of Circuit, dated 22d July, 1815.

I request you will obtain the opinion of the Nizamut Adawlut on the following point: Clause third, Section 3, Regulation I. 1811, specifies, "any person who may hereafter be convicted of the offence of breaking into any warehouse, storehouse, or other building, or place used for the custody and preservation of property, either by day or by night, with the intent to rob, shall be sentenced to imprisonment for the term of seven years, and to corporal punishment not exceeding twenty stripes of the *corah*." Clause fourth, Section 2, Regulation XI. 1814, states, "the sentence of imprisonment *in banishment* for seven years, and corporal punishment not exceeding twenty stripes of the *corah*, prescribed by clauses second and third of Section 3, Regulation I. 1811," &c.

2. The word *banishment* is not mentioned in the first quoted clause, section, and regulation, but it appears from the last quoted one, as if it was intended to form a part of the punishment on conviction of the offences specified in both; however, to prevent misconception, I request you will submit this letter for the opinion of the Nizamut Adawlut, whether a judge of circuit can pass a sentence of banishment, on conviction of the offence specified in clause third, Section 3, Regulation I. 1811, in addition to the 20 *corahs*, and seven years' imprisonment therein prescribed.

To the third Judge of the Dacca Court of Circuit, in reply to the above, dated the 2d August, 1815.

"I am directed by the Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 22d ultimo, submitting for the consideration of the Court, the question, whether the judge of circuit can pass a sentence of banishment on conviction of the offence specified in clause third, Section 3, Regulation I. 1811, in addition to the 20 *corahs* and seven years' imprisonment therein prescribed.

2. "In reply, I am directed to communicate to you the opinion of the Court, that as banishment does not form part of the punishment prescribed in the clause cited, it cannot be adjudged under that clause."^{*}

August 2, 1815.

* The third Clause of Section 2, Regulation XII. 1818, authorizes a court of circuit to sentence on banishment, on a conviction of burglary.

Letter from the Judge of the City of Benares, dated the 7th August, 1815.

A difficulty has arisen from the operation of the several clauses of Section 13, Regulation XXIII. 1814.

2. By clause the first, suits cannot be received by persons invested with the powers of *moonsiff*, unless the cause of action shall have arisen within the period of one year previously to the institution of such suit. Clause the second prohibits these persons from hearing or determining suits in which themselves, their dependants, or an European, or an American may be party. And by clause the third, suits cannot be received or determined by them, which persons may desire to prefer *in formā pauperis*.

3. The question, therefore, which arises, is, who is to hear and determine these suits. It can hardly have been intended that the time of the judge should be taken up by suits not exceeding in amount or value the sum of sixty-four Sicca Rupees; to impose upon the registers the suits referred to in clause the second would be a hardship: and if the suits described in clauses first and third are to be imposed upon the *sudder ameens*, it will make the situation of those officers worse than it was before.

4. It is quite clear that, under existing rules, these suits must be heard and determined somewhere. By the clause in question, the *moonsiffs* alone are prohibited from hearing them, and the rule allowing a period of twelve years for the institution of civil suits without exception, has not been rescinded.

5. The suits which persons invested with the powers of *moonsiff* are thus prohibited from receiving will be numerous, and I beg to be informed in what manner the Court of Sudder Dewanny Adawlut understand they are to be disposed of.

P. S. The number of suits withdrawn from the *moonsiffs* under the second clause of Section 13, Regulation XXIII. 1814, that were instituted previously to the promulgation of that regulation, amount to eighty-four.

To the Judge of the City of Benares, in reply to the above, dated the 17th August, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th instant, requesting the Court's instructions regarding the trial of the suits referred to in the several clauses of Section 13, Regulation XXIII. 1814.

2. With respect to suits instituted *in formā pauperis*, the *sudder ameens*, as well as the *moofussil* commissioners, being expressly restricted from taking cognizance of them, the Court observe, that such suits, as also the suits excepted from the jurisdiction of the *sudder ameens* by the latter part of Section 68, Regulation XXIII. 1814, can only be tried by the judge or register.

3. The other suits mentioned in your letter, as not cognizable by the *moonsiffs* under the first clause of Section 13, and the first part of clause second of that section, may be referred, at your discretion, either to the register or *sudder ameens*.

August 17, 1815.

Letter to the Judge of the City of Moorshedabad, dated the 31st August, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 10th May last, requesting the Court's instructions on two

No. 219.

1814
Reg. XXIII.
Sec. 13, C. 1, 2, 3,
and Sec. 68.

No. 220.

1790
Reg. VII. Sec. 13.

points relative to the course of proceeding in summary suits, under the provisions of Regulation VII. 1799.

2d. The Court observe, that the summary inquiry authorized by Section 15 of the above mentioned regulation, being expressly restricted by the fourth clause to cases in which the under-tenant or his surety may be arrested and brought in to the *zillah* court, under the preceding clauses of the same section, the inquiry authorized cannot take place without the arrest of the under-tenant or his surety. But a reasonable time should be allowed to the plaintiff to point out the under-tenant or his surety, before the petition of arrest received under the second clause of Section 15, Regulation VII. 1799, is finally disposed of; and if there be no default of the plaintiff, it would, the Court think, be proper to extend the period originally granted, if the plaintiff desire it, with a view to save his right of summary action, under the first clause of Section 4, Regulation II. 1803.

3d On the second point noticed in your letter, the Court are of opinion, that the provisions of Section 15, Regulation VII. 1799, suppose the under-tenant, or his surety, at the time of a petition being preferred for their arrest, to be within the *zillah* or city jurisdiction in which the land, for which the arrear of rent is claimed, may be situated; as the summary inquiry provided for could not be regularly or conveniently made in a different jurisdiction, and the regulation contains no provision for arresting an under-tenant or surety in one *zillah* or city, in which he may be resident, and sending him to another in which the land is situated. It may be desirable to include a provision for this purpose in some future regulation, but in the mean time, the Court desire, that you will be guided by the construction above stated.*

August 31, 1815.

No. 221.

1812.
Reg III Sec 2.

Extract from a letter to the Mooshedabud Court of Circuit, dated the 8th September, 1815.

With reference to the 10th and 11th paragraphs of the magistrate's letter, the Court direct me to observe, that the rule contained in the first clause of Section 2, Regulation III. 1812, does not, in their opinion, require the subsistence money of witnesses to be lodged, until the prosecutor is desirous of taking out process to procure their attendance, and that the consequence noticed by the magistrate may be obviated by not summoning the witnesses, until the magistrate or his assistant be prepared to take up the case.

September 8, 1815.

No. 222.

1799.
Reg. X Sec. 2.

Extract from the proceedings of the Nizamut Adnclut, under date the 14th Sept. 1815.

The register, in conformity with the orders of the third Judge, lays before the Court a letter from the fourth judge of the Bareilly court of circuit, with the proceedings which accompanied it, on the commitment and trial of Sewah Singh on a charge of dacoity, wounding, and arson; No. 1, of the magistrate's calendar of *zillah* Bareilly for the month of July, 1815.

* Provisions to meet these points were enacted by Section 18, Regulation VIII. 1819.

The third judge observes, that the prisoner in the trial before mentioned is not declared by the *futua* of the law officer to be convicted on *Zam Ghaleh*, or strong presumption, and that the judge of circuit has not given, either in his letter, or in the proceedings on the trial, a clear and explicit opinion on the guilt or innocence of the prisoner, as required by Section 2, Regulation X. 1799.—The third judge proposes, therefore, that the proceedings on the commitment and trial be returned to the Bareilly court of circuit, with directions to the fourth judge of that court to re-consider the case, and to form his opinion, whether, under all the circumstances, the confession of the prisoner is worthy of belief, and therefore, sufficient for his conviction, or not. That if he should deem the prisoner duly convicted, he will, of course, refer the trial for the final sentence of this Court, stating his opinion explicitly on the prisoner's guilt. But if otherwise, it will be incumbent on him to pass final sentence of acquittal, and to issue his warrant to the magistrate for the discharge of the prisoner, holding the prisoner to security, if there appear to him sufficient grounds to warrant that measure.

The chief judge is of opinion, that the *futua* of the officiating law officer of the court of circuit on the trial in question is too imperfect to admit of any definitive sentence being passed upon the case, and considers it necessary, therefore, for the ends of justice, that the proceedings should be referred in the ordinary course for the *futua* of the law officers of this Court.

The papers being then referred to the second judge, he expresses his concurrence in the opinion recorded by the third judge.

Resolved, accordingly, in conformity with the opinion of the majority of the Court, that the proceedings on the commitment and trial of the prisoner be returned to the Bareilly court of circuit, with a letter from the register.

September 14, 1815.

Extract from a letter from the Judge of Zillah Mymensing, dated the 20th September, 1815.

No. 223.

1814
Reg I Secs 15,
16, and 17
Reg. XXIII
Sec 73 C 3.
Reg XXIV Sec. 9,
C. 4 and 6

Do the provisions of Sections 15, 16, and 17, Regulation I. 1814, apply to the court of an additional register stationed in the *mofussil*, and invested with special powers under clauses fourth and sixth of Section 9, Regulation XXIV. of 1814, as well as to that of the ordinary register.

To the Judge of Zillah Mymensing, in reply to the above, dated 7th December, 1815.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 20th September last, and in reply to acquaint you, that referring to the rule contained in the sixth clause of Section 9, Regulation XXIV. 1814, the Court are of opinion, that a register, (at whatever place he may be stationed,) who is vested with the special powers provided for by that clause, or by the 4th clause of the same section, shall be guided in the trial of all causes of the nature therein mentioned by the rules in force for the trial of similar causes before the judge; that consequently the *dur-khasts* for exhibits and witnesses, specified in Sections 15 and 16, Regulation I. 1814, and the pleadings and other papers mentioned in Section 17 of the same regulation which may

be filed in the causes in question, must be written on stamp paper of the value of 1 Rupee, instead of 8 Annas, the value prescribed for causes before registers vested with the ordinary power.

2. The Court are further of opinion, that the same construction of the third clause of Section 75, Regulation XXIII. 1814, is applicable to appeals from the decisions of *moonsiffs* which may be referred to *sudder ameens*, under the provisions of that section.

(N. B. Circulated on the same date for general information.)

December 7, 1815.

No. 224.

1801.
Reg. VI Sec. 32.

To the Judge of Zillah Midnapore, dated the 21st September, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, and in reply to the question therein contained, to communicate to you the opinion of the Court, that suits instituted in conformity with Section 32, Regulation VI. 1801, [for the recovery of fines for the illicit manufacture, &c. of salt,] must be received and tried as regular suits, there being no provision for a summary process in such cases.*

The Court are also of opinion, that the plaint in the suits referred to should be drawn out on stamp paper, under the rule contained in Section 21, Regulation XXVI. 1814.

September 21, 1815.

No. 225.

1813
Reg. VI Sec. 3,
C. 2.

On the 31st of October, 1815, the Court of Sudder Dewanny Adawlut determined, in reply to a reference from the judge of Bundelcund, that "applications made to the courts for the execution of awards by private arbitration, under the second clause of Section 3, Regulation VI. 1813, are to be received and enforced under the rules applicable to summary process, as directed in the said clause."

October 31, 1815.

No. 226.

1793
Reg. XXXVI.
Sec. 9
C. C P 1803
Reg. XVII. Sec. 9.

To the Acting Judge of Zillah Cawnpore, dated the 3d November, 1815.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the judge, under date the 22d July last, with its enclosures, requesting the Court's construction of Section 9, Regulation XVII. 1803, relative to the forms to be observed in the registry of deeds.

The Court understand the intention of the section to be, that the person executing the deed, or his authorized representative (*mokhtar*), must attend to acknowledge the execution, and that one or more witnesses to the execution of the deed must also attend to prove the execution by their testimony on oath.

When the person executing the deed may depute a *mokhtar* with a *mokhtarnamah*, instead of attending himself, to acknowledge the deed, the execution of the *mokhtarnamah* should also be proved by the examination of two witnesses on oath.

But the Court do not consider it to be required by the regulation cited, that either the party executing the deed, or his *mokhtar*, should be examined on oath.

November 3, 1815.

* This Regulation has been rescinded by Regulation X. 1819.

To the Benares Court of Appeal, dated 9th December, 1815.

I am directed by the Sudder Dewanny Adawlat to acknowledge the receipt of a letter from you, dated the 13th ultimo, and to observe to you, in reply, that the provisions of Regulation XIII. 1808, have been modified by Regulation XXV. 1814; under Sections 3 and 5 of which all original regular suits in which the value or amount of the claim, calculated according to the provisions of Section 14, Regulation I. 1814, may exceed five thousand Sicca Rupees, are to be instituted and tried in the first instance in the provincial court.*

November 9, 1815.

*Proceedings of the Court of Nizamut Adawlut, under date the 13th November. 1815,
on the trial of Allum for highway robbery, referred by the fourth Judge of the
Bareilly Court of Circuit.*

The prosecutrix having deposed on oath, on the trial, that the prisoner snatched a silver *huslee* from her neck, and that, on her seizing him, he kicked her down, and ran away, but that he did not use any previous intimidation or force, or do her any personal injury; and witnesses who saw the prisoner, both immediately before and after the commission of the fact, having deposed that they did not observe any weapon or stick in his hand: the second judge is of opinion, that the offence of which the prisoner is guilty, is not that of robbery by open violence, as described in clause first, Section 3, Regulation LIII. 1803, but that the act constitutes the offence of forcibly taking a *huslee* from the prosecutrix's neck, without previous intimidation or personal injury or violence; and of a subsequent assault, for which he is only liable to corporal punishment and a short imprisonment. The case is referred for the opinion of another judge.

The fourth judge concurring with the judge of circuit and the *futwa* of the law officer of this court, that the prisoner is guilty of highway robbery, it is necessary to refer the case to another judge.

The chief judge concurring in the opinion expressed by the second judge, the following sentence is passed upon the prisoner.

The prisoner, Allum, has been convicted by the *futwa* of one of the law officers of this Court of highway robbery, and declared liable to discretionary punishment by *Acoobut*; the Court, however, not considering the offence of the prisoner to constitute robbery by open violence, as defined by clause first, Section 3, Regulation LIII. 1803, but amounting only to forcibly taking away the prosecutrix's *huslee* from her neck, without any previous intimidation, personal injury, or violence, and to a subsequent assault on her, sentence the said prisoner to receive fifteen stripes with the *corah*, and to imprisonment and hard labour for five years from this date.

See case of Mehtab, charged with highway robbery, convicted of snatching the property of the prosecutor, unattended with intimidation or personal injury, and sentenced, on the 9th April, 1814, to 30 *corahs* and 7 years' imprisonment.

No. 227.

1808
Reg XIII.
Sec 3

No. 228.

1803
Reg LIII Sec 3,
C. 1.

* This however has been superseded by Section 2, Regulation XIX. 1817.

See also the case of Lellah Gwallah charged with highway robbery, convicted of forcibly snatching a cloth from the person of the prosecutor, and sentenced, on the 8th October, 1814, to 15 corahs and 3 years' imprisonment.

November 13, 1815.

No. 229.

1810
Reg. XVI.
Secs. 16 and 18.

Extract from a letter from the fourth Judge of the Moorshedabad Court of Circuit, dated the 23rd November, 1815.

Not being aware of any regulation authorizing us to sanction the offer of a reward for the apprehension of a prisoner who may escape from his guard or from jail, we request the instructions of the Court of Nizamut Adawlut on this question as well as its sanction to comply with the request of the city magistrate.

Extract of a letter to the Moorshedabad Court of Circuit, in reply to the above, dated the 30th November, 1815.

Upon the question stated in the 2d paragraph of your fourth judge's letter, I am directed to observe, that although the rule contained in Section 16, Regulation XVI. 1810, does not expressly provide for the case of a convict escaping from custody, the Court are of opinion that, under the general tenor of the rule, and with reference to the further provision in Section 18, the courts of circuit are competent to authorize the offer of a reward to the extent therein specified in the cases referred to.

November 30, 1815.

No. 230.

1793
Reg. XXIV.
1795
Reg. XXXIV.
1803
Reg. XXIV.

Extract of a letter to the Bareilly Court of Appeal, under date the 12th January, 1816.

2. "The Court direct me to observe to you, that as all claims upon Government to pensions are cognizable only by the collectors under the provisions of Regulation XXIV. 1803, subject to an appeal to the Board of Commissioners and the Governor General in Council, the case to which the above papers relate does not appear subject to the cognizance of your court."

January 12, 1816.

No. 231.

1793
Reg. XIII
Sec. 9. C. 8
1803
Reg. XII Sec. 12,
C. 8.

The Court, on the 12th Jan. 1816, in reply to a reference from the Bareilly court of circuit, determined, that a person who had been punished for corruption or extortion on a criminal prosecution would not afterwards be liable to the fine provided by Section 12, Regulation XII. 1803, on a civil prosecution; though he would of course be subject to civil action for restitution of the money received by him.

January 12, 1816.

No. 232.

1810.
Reg. XVI. Sec. 11.

To the Acting Magistrate of Sillah Cawnpore, dated the 24th January, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 10th instant, and in reply to the questions therein contained, to communicate to you the opinion of the Court, that a magistrate must be considered to possess the power, under the regulations, of granting leave of absence to a police officer not placed by the orders of Government under the immediate control of a joint magistrate, without

previous reference to the latter. But with respect to the propriety of exercising such power, the Court observe that it must depend on the circumstances of each case. And with the view of obviating any inconvenience which might arise, they are of opinion, that the application in such cases should be submitted through the channel of the joint magistrate, to enable him, in forwarding it to the magistrate, to state any objections which he may have to offer against a compliance.

January 24, 1816.

A false deposition, upon oath, or under a solemn declaration taken instead of an oath, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions for perjury contained in Regulation II. 1807; notwithstanding the provision for malicious, vexatious, and unfounded charges in Section 5, Regulation VII. 1811.

This was determined in the case of Punchum, on the 29th January, 1816, and in the case of Soogaikhan, on the 25th April, 1817.

January 29, 1816.

Extract of a letter from the Judge of Zillah Rungpore, under date the 28th July, 1815.

4. The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V. 1812, which seems to have been understood by the farmers and *zemindars* as authorising them to consider the *ryots*, on the expiration of their leases, as tenants at will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of Section 15 have also induced many, who had demands against their tenants on old engagements, to substitute summary prosecutions for the former mode of distress.

5. By far the greater number of summary suits preferred last year were for arrears of rent due on *caboolyuts*; but many of those that have lately been instituted are consequent to the more general operation of Section 10, Regulation V. 1812, and are preferred, either by the *ryots*, after releasing their property from distress, or by the farmers or *zemindars*, to recover increased rents, on the grounds of having served their tenants with the notice described in the above section and regulation; the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist; as the respective rights of the proprietors and the *ryots*, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

6. On first view of Section 10, Regulation V. 1812, it might be inferred that the *zemindars* or their representatives possess the power of exacting in the first instance by distress or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to pay the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpreta-

No. 233.
1807.
Reg. II.
1811.
Reg. VII Sec. 5.

No. 234.
1812
Reg. V. Secs. 9, 10,
and 15
1794.
Reg. IV. Sec. 7.

tion, however, does not seem to be easily reconcileable with that part of Section 7, Regulation IV. 1794, which, being declaratory of the rates at which the *ryots* were entitled to demand *pottahs*, and, of course, to continue in possession of their lands, cannot be considered as abrogated by Section 3, Regulation V. 1812, and I have hitherto deemed it necessary to require *zemindars* and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under Section 15, Regulation V. 1812, to show that the amount demanded in the notification served on their tenants was conformable to the *pergunnah* rates, and the actual extent of land.

7. Should this construction of the regulation be correct, (and I beg the favour of your informing me, should the Court consider it otherwise,) it is evident, that in the generality of suits denominated summary, it will now be necessary to adduce evidence to prove the *pergunnah* rates, the quality of the cultivator's land, and frequently the quantity thereof, all of those points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the *zemindars* before the decennial settlement in the nominal extent of every farm or *jote* on their estates, for the purpose of imposing upon Government, and obtaining their lands in perpetuity on favorable terms.

Extract from the Proceedings of the Court of Sudder Dewanny Adawlut, under date the 3d February, 1816.

The Court entirely concur in the construction of Section 10, Regulation V. 1812, stated in the 6th paragraph of Mr. Scott's letter, dated the 28th July, 1815, and resolve, that he be informed accordingly. The Court observe, that the written notice, required by Section 9 of that regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent "under subsisting regulations," including, of course, the unrepealed provisions in Section 7, Regulation IV. 1794, relative to the renewal of *pottahs* at the established rates of the *pergunnah*.

February 3, 1816.

No. 235.

To the Calcutta Court of Circuit, dated the 9th February, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 22d November last, with the minutes and other papers which accompanied it, requesting the Court's construction of Section 17, Regulation IX. 1793, and Section 22, Regulation IX. 1807; also a further letter dated the 29th ultimo, with the two minutes of your third judge therein mentioned.

2. The Court entirely concur in the construction given by your third judge, Mr. Rees, to the provisions of Section 17, Regulation IX. 1793, and Section 22, Regulation IX. 1807.

3. The Court observe, that the last sentence in the former section includes all persons released or punished by the magistrates upon insufficient grounds; and that the modification of the original rule contained in Section 22, Regulation IX. 1807, expressly relates to the same description of persons, providing only for a further investigation when requisite, and for a reference of the case to the judges of the court of circuit collectively, instead of the Nizamut Adawlut.

4. The Court find nothing in the section last mentioned to support the opinion of your fourth judge, Mr. Watson, that the voice of the court collectively is required by Section 22, Regulation IX. 1807, in those cases only where the summary proceedings before the magistrate appear to the judge at the session to be incomplete; and he considers it requisite for the ends of justice, to direct additional inquiry to be made by the magistrate, and the result to be communicated to the judges of the court of circuit collectively for their orders in the case.

5. On the contrary, the original rule in Section 17, Regulation IX. 1793, the modification of it in Section 22, Regulation IX. 1797, and the provisions of Section 12, Regulation XXV. 1814, appear to the Court to define clearly the powers of a single judge of a court of circuit, with respect to all persons punished or discharged by a magistrate, and included in calendars referred to in those sections, requiring, in all such cases, the concurrence of two judges of the court of circuit to reverse or alter the decision of the magistrate.

February 9, 1816.

To the Magistrate of Zillah Rajshahye, dated the 9th February, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 27th ultimo, and with reference to the 4th and 5th paragraphs, to acquaint you, that in all cases wherein an order may have been passed either by the Nizamut Adawlut or court of circuit, directing the magistrate to hold a prisoner to security, to be approved by the court of circuit: you should fix the amount of security to be given by the prisoner in such sum as may appear to you just and proper, and report the same for the consideration and orders of that court.

February 9, 1816.

To the Joint Magistrate at Balasore, dated the 16th February, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant; and in reply to the first question therein contained to communicate to you the opinion of the Court, that in cases when a magistrate may see grounds for a criminal prosecution against a native ministerial officer on a charge of bribery or extortion, it is not necessary that such prosecution should be deferred for a civil action, as provided for by Regulation XIII. 1793.

2. Upon the second question submitted by you, the Court are of opinion, that a magistrate is competent to pass final sentences of punishment on conviction of such offences to the extent of the powers vested in him by the regulations, when such punishment may appear to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. If otherwise, it would of course be necessary to commit the prisoner for trial before the court of circuit.

February 16, 1816.

To the Judge of Zillah Mymensing, dated the 16th February, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 27th ultimo, requesting the opinion of the Court, whether the provisions

No. 236.
1803.
Reg. LIII.
Sec. 2, Cl. 6.
Sec. 7, Cl. 2.

No. 237.
1793
Reg. XIII.
1795
Reg. XII.
1803
Reg. XII.

No. 238.
1814
Reg. XXVI.
Sec. 15, Cl. 8.

of clause eight, Section 15, Regulation XXVI. 1814, are intended to apply to decrees passed before the 1st February, 1815.

2. By the third clause of the Section above cited, it is declared, that decrees passed previously to the promulgation of Regulation XXVI. 1814, (viz. 1st February, 1815,) shall be executed according to the regulations before in force, and in the same manner as they had formerly been enforced.

3. The fourth clause of the same section empowers the several courts not to carry into execution any decree passed subsequently to the 1st February, 1815, except in conformity with the rules prescribed in the following clause of that section.

4. Under these provisions the Court are of opinion, that clause eighth is not expressly applicable to decrees passed antecedently to the 1st February. But if any doubt should arise on the propriety of executing a prior decree, it appears just and proper that notice should be given, and proceedings held in the manner directed by the clause in question.

February 16, 1816.

No. 239.

1814
Reg. XXIII.
Secs. 73 and 45.
Reg. XXVI.
Sec. 15.

, *To the Acting Judge of Zillah Rajshahye, dated the 17th February, 1816.*

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the late judge, dated the 10th instant, and to acquaint you, that a list of Errata in the Persian translation of several regulations of 1814, was published a short time since by the present translator of the regulations; including the inaccuracy pointed out by Mr. Shakespear in the translation of Section 73, Regulation XXIII. 1814, whereby Section 45 is erroneously made applicable to *sudder ameens*.

The Court at the same time direct me to observe, that the rules regarding the execution of decrees passed by *sudder ameens*, in common with the decrees of the judge and registers of the *zillah* and city courts, are contained in Section 15, Regulation XXVI. 1814, the 5th clause of which particularly mentions *sudder ameens*.

February 17, 1816.

No. 240.

1803
Reg. XXXVII.
Sec. 3, Cl. 7.
Bengal, 1793
Reg. XXXI.
Sec. 3, Cl. 7.

To the Judge of Zillah Etawa, dated the 17th February, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you dated the 31st ultimo, relative to certain suits instituted by the commercial resident at Etawa, for the recovery of the penalty prescribed in clause seventh, Section 3, Regulation XXXVII. 1803, against persons failing in their engagement for the delivery of saltpetre, and requesting the Court's opinion, whether the provisions in the said clause and section are applicable to such engagements or not.

2. In reply, I am directed to state, that if saltpetre be an article of the Company's investment in *zillah* Etawa, the principles of the rules contained in Regulation XXXVII. 1803, are by Section 14 of that regulation declared applicable to manufacturers and other persons employed in the provision of it.

3. But whether the penalty prescribed in the clause cited, or the sixth clause of the same section, be recoverable in the suits referred to in your letter, the Court can give no opinion, without having the proceedings in such cases judicially before them.

February 17, 1816.

To the Acting Judge of Zillah Jungle Muhals, dated the 17th February, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th ultimo, stating doubts on the construction of Section 8, Regulation XXVI. 1814.

2. The Court observe, that the 10th clause of the section above cited modifies the rules before in force, and directs that the respective periods limited by the regulations for the admission of appeals, in the cases the e.m referred to, shall be calculated from the date on which the decisions may have been passed, excluding from the calculation of such period the interval which may have elapsed, in each instance, between the date on which the requisite stamp paper may have been furnished by the party to the court, and that on which the copy of the decree may have been tendered or delivered to the party in the open court in the mode prescribed by the regulations.

3. The Court, therefore, consider the rules contained in the section above cited to be applicable to appeals from all decisions passed subsequent to the 1st of February, 1815, the date fixed for the operation of the Regulation in question.

February 17, 1816.

To the Judge of Zillah Goruckpore, dated the 24th February, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 13th instant, with its enclosure from your register, and to observe in reply, that Sections 15 and 17, Regulation I. 1814, cited by Mr. Smith, as well as Section 15 of that regulation, must be considered applicable to all suits tried by a register of whatever description, and on the decision of such suits the register is entitled only to a moiety of the institution fee, or of the amount of the stamp duty substituted for such institution fee by Regulation I. 1814, as expressly declared in the 2d Clause of Section 8, Regulation XXIV. 1814.*

February 24, 1816.

To the Judge of Zillah Jessor, dated the 15th March, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to communicate to you the opinion of the Court, that in the suits noticed in your letter, viz. original suits referred for trial to the *sudder amens*, it is not necessary that applications for the attendance of witnesses should be drawn out on stamp paper, under Section 16, Regulation I. 1814, the provision contained in that section, as well as in Sections 15, 17, 18, and 19, not being applicable to such suits.

March 15, 1816.

No. 241.

1814
Reg. XXVI
Sec. 8

No. 242.

1814.
Reg. I. Secs. 15,
16, and 17.

No. 243.

1814
Reg. I. Secs. 15, 16,
17, 18 and 19.

* The fees of Registers were abolished by Regulation II. 1821.

No. 244.

1807
Reg IX Sec 19
1809.
Reg VIII Sec. 5

*Extract of a Letter from the Acting Superintendent of Police, Western Provinces,
under date the 18th January, 1816.*

4. As repeated instances have of late occurred of the inferior officers of police deserting their posts in time of need, it appears extremely desirable that the specific penalties prescribed for this offence, whether proceeding from neglect or cowardice, should be fully defined, that the conditions attaching to the service may be clearly explained and understood. I request therefore to be favoured, for my information and guidance, with the construction of the Court, (founded, not upon the merits of this individual case, but upon the question generally,) whether, with reference to the opinion given by the law officer of the Bareilly court of circuit, as submitted with my letter of the 5th of June last, desertion, wilful neglect or disobedience on the part of a *bukhundaz* or *suwar* entertained at the expense of Government for the purposes of police, is, or is not, punishable by the magistrates under the provision of Section 19, Regulation IX. 1807, and if not, I request to be favoured with the opinion of the Court regarding the extent of punishment to which an inferior police officer is liable under the regulations, on conviction of the species of misconduct above particularized.

*To the Acting Superintendent of Police, Western Provinces, in reply to the above,
dated the 15th March, 1816.*

The Court of Nizamut Adawlut have again had before them, your letter of the 18th January last, and with reference to the 4th paragraph, desire me to communicate to you the following observations upon the questions therein contained.

By the fifth clause of Section 5, Regulation VIII. 1809, a specific provision is made for the punishment of neglect of duty by officers of police. The Court are of opinion, therefore, that in cases of this description the magistrate is restricted to the limitation of punishment therein defined; but that, if any distinct misdemeanor beyond neglect of duty should be established, the case would, of course, fall within the magistrate's discretion, under the general powers vested in him, by Section 19, Regulation IX. 1807.

March 15, 1816.

Memorandum of constructions of Regulations determined by the Court of Sudder Dewanny Adawlut in the English Department, on the 15th March, 1816, ordered to be translated for the information of the vakeels.

No. 245.

1814
Reg. XXIV.
Sec. 8, C. 7.

1814
Reg. XXV. Sec. 5.

1. The rule contained in this clause is applicable to all decrees passed by the *zulah* and city judges since the 1st February, 1815, on appeals from the decisions of their registers, whether the suits may have been referred to the register before or after the above date.

2. Under the provisions of this section, which are construed to modify all former rules in force for regular appeals to the Sudder Dewanny Adawlut, the regular appeals

to this Court, (viz. not being special or summary appeals,) are restricted to regular civil suits tried and determined in the first instance by the provincial courts. In suits, therefore, which may have been originally tried in the *zillah* or city courts, and subsequently in appeal by the provincial courts, if the decision of the latter have been passed subsequently to the 1st February, 1815, whatever may be the amount adjudged or disallowed by the decree of the provincial court, a second regular appeal is not open to the Sudder Dewanny Adawlut. This Court can admit a special appeal only in such cases, under the provisions of Section 2, Regulation XXVI. 1814, with an exemption of paupers from the use of the stamp paper required by the third clause of that section; provided they shall appear entitled to appear as paupers, under the provisions of Regulation XXVIII. 1814.

3. Should the Court of Sudder Dewanny Adawlut reject a special appeal in any such case, which from the amount or value may be appealable to the King in Council, the appellant may appeal to His Majesty in Council under the rules which have been established for such appeals, and a translation of the whole of the proceedings held in the *zillah* or city, and provincial courts, will be transmitted to England, with a view to enable the King in Council to form a judgment on the merits of the case.

4. Under the provisions in the two clauses referred to, [in the margin,] the Court are of opinion, that the only second or special appeals now admissible by the Sudder Dewanny Adawlut in regular suits, or those specifically mentioned in the third clause of Section 5, Regulation XXV. 1814, (or in the terms of the Regulations,) "from the judgments passed by provincial courts on regular appeals admitted by them, from original decisions of *zillah* and city judges, and assistant judges, or from the original decisions of registers passed under the provisions of clause sixth, Section 9, Regulation XXIV. 1814;" viz. in regular suits originally tried and decided by the *zillah* or city judges, or assistant judges, or by registers specially empowered under the sixth clause of Section 9, Regulation XXIV. 1814, and subsequently heard and determined in appeal by the provincial courts; consequently that judgments of the provincial courts passed after the 1st February, 1815, upon second appeals to those courts, in suits originally tried by the registers, and afterwards in appeal by the judges of the *zillah* or city courts, are final.

1814.
Reg. XXV
Sec. 5, C. 3
Reg. XXVI.
Sec. 2, C. 6.

5. The Court understand the intention of this clause to be, that all judgments upon second appeals to the provincial courts, which might be passed by those courts, after the 1st February, 1815, should be final, whether the appeal have been admitted by the provincial court before or after that date.

1814
Reg. XXVI
Sec. 2, C. 6.

March 15, 1816.

Letter from the fourth Judge of Calcutta Court of Appeal, dated the 24th April, 1816.

We beg to be favoured with the opinion of the Court of Sudder Dewanny Adawlut, whether a special appeal may be admitted under clause 1, Section 2, Regulation XXVI. 1814, to reverse an error in the determination of facts, where the judgment is manifestly without, or contrary to, evidence; or where exorbitant damages have been given; or

No. 246.
1814
Reg. XXVI.
Sec. 2, C. 1

whether a special appeal lies exclusively on matter of law, practice, and usage, &c. arising on the face of the decree, and not requiring evidence to substantiate or support it.

Letter to the Calcutta Court of Appeal in reply to the above, dated the 1st May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your fourth judge, dated the 24th ultimo, requesting the Court's construction of clause 1, Section 2, Regulation XXVI. 1814, regarding the admission of special appeals.

2. Upon the first question proposed by your fourth judge, viz. whether a special appeal may be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence, the Court are of opinion, that a special appeal cannot be admitted on such grounds under Section 2, Regulation XXVI. 1814; which requires that all the facts of the case must be assumed as stated in the decree.

3. Upon the second point, viz. when exorbitant damages may appear to have been given, the Court can offer no opinion without more particular information of the case, and the damages awarded, such as might enable them to judge, whether the case is within any of the special grounds stated in the first clause of Section 2, Regulation XXVI. 1814. The Court, therefore, can only suggest, that you should exercise your own judgment on the case, in determining whether it falls within any of the prescribed grounds for the admission of special appeals or otherwise.

May 1, 1816.

No. 247.

1814
Reg. I Sec 18.
1816.
Reg. IV. Sec. 2.

To the Acting Magistrate of Zillah Allahabad, dated the 1st May, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 22d ultimo, with its enclosure from Mr. Middleton, joint magistrate at Futtehpore.

2. Upon the first question contained in Mr. Middleton's letter, the Court are of opinion, that all miscellaneous petitions or applications which may be preferred to a magistrate must be considered within the provisions of Section 18, Regulation I. 1814, excepting such as are presented by persons exempted therefrom by Section 19, Regulation XXVIII. 1814, and Section 2, Regulation IV. 1816.

3. The Court are further of opinion, that only such petitions on unstampt paper, which are allowed by the Regulations, should be filed on record.

4. With respect to the question proposed in the last paragraph of Mr. Middleton's letter, regarding the perusal of petitions on unstampt paper, the Court are of opinion, that the magistrates must exercise their discretion in particular cases where sufficient reason may appear for the petition not having been presented on stampt paper, as required by Section 18, Regulation I. 1814. But that, as a general rule, petitions required to be presented on stampt paper should not be read, unless so presented.

May 1, 1816.

To the Dacca Court of Appeal, dated the 6th May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 27th ultimo, and to acquaint you, that supposing the omission therein noticed, (viz. to state *distinctly*, as required by the third clause of Section 2, Regulation XXVI. 1814, the specific ground, or grounds, under the first clause of that Section, on which a special appeal is solicited) in the petitions for special appeals not yet disposed of, to have proceeded from inadvertence, the Court are of opinion the appellants should be allowed to supply it by a supplementary petition, drawn out on the paper prescribed in Section 17, Regulation I. 1814.

May 8, 1816.

No. 248.

¹⁸¹⁴
Reg. XXVI.
Sec. 2, C. 3.

To the Judge of Zillah Rajshahi, dated the 15th May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, and in reply to refer you to the first clause of Section 20. Regulation XXVI. 1814, whereby the provisions of Section 16, Regulation I. 1814, regarding applications for summoning witnesses, is expressly restricted to original regular suits, and to appeals regular or special, and declared not applicable to summary suits.

May 15, 1816.

No. 249.

¹⁸¹⁴
Reg. XXVI.
Sec. 20, C. 1.

Letter from the Judge of Bundecund, dated the 6th May, 1816.

In Clause 4, Section 32 of Regulation XXVIII. of 1803, it is stated, respecting summary suits for arrears of rent, that the judge "may refer the case to the collector of the district for adjustment and report, when neither the judge nor his register may be able, from other avocations, to try and determine it without delay, and where the case may not be cognizable by the native commissioners acting under them."

2. I take the liberty of soliciting the sentiments of the Court, whether it is to be inferred from the latter words of the above quotation, that the native commissioners and *sudder amens* are competent to receive and try summary suits for arrears of rent, if under 64 Rupees, under the rules established for the receipt, trial, and execution of summary suits.

To the Judge of Zillah Bundecund, in reply to the above, dated the 22d May, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 6th instant, and in reply to communicate to you the opinion of the Court, that summary suits are not cognizable by *sudder amens* or *moonsiffs*, under the provisions of Regulation XXIII. 1814, or any other regulation at present in force.

May 22, 1816.

No. 250.

¹⁸¹⁴
Reg. XXIII.

To the Judge of Zillah Nuddea, dated the 29th May, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 16th instant, and to acquaint you, that under the general powers vested in registers to the *zillah* and city courts by Regulation XXIV. 1814, in suits referred to them under that regulation, the Court are of opinion, that they are

No. 251.

¹⁸¹⁴
Reg. XXIV.
Sects. 8 to 12.

competent to proceed against persons charged with resistance to the process issued by them in such suits, in the same manner as the *zillah* and city judges are empowered to proceed in similar cases, subject to a summary appeal from the decisions passed by them to the judge of the *zillah* or city court.

2. The Court at the same time observe, that under the powers reserved to the judges of the *zillah* and city courts, by Section 10, Regulation XXIV. 1814, they may, at all times, recal from their registers the suits referred to them wherein a resistance of process may have taken place, including, of course, any depending investigation of the stated resistance.

May 29, 1816.

No. 252.

1813.
Reg. X. Sec. 22.

From the Judge and Magistrate of Zillah Cuttack, dated the 30th May, 1816.

The acting collector of this district having petitioned the Court to commit a witness for perjury, who is stated to have given, on oath, a false deposition before him in a case under investigation by him, in conformity to the rules contained in Section 22, Regulation X. 1813; it becomes necessary to ascertain, whether a collector is authorized by Regulation X. 1813, to examine witnesses on oath without having previously obtained the authority of the judge; for should it appear that the oath administered is illegal, I conceive no prosecution will hold good against this witness.

By Section 13, Regulation VIII. 1794, a collector must be authorized by the judge to examine witnesses on oath, in cases referred to him for investigation, prior to his administering the oath; Section 22, Regulation X. of 1813, is silent as to the mode in which the examinations are to be made; and I am not aware that any other regulation directs collectors to examine witnesses on oath, excepting in cases pending before them which may regard the conduct of any of their native officers.

You will oblige me, therefore, by obtaining for me the opinion of the Courts of Sudder Dewanny and Nizamut Adawlut, whether a collector, by the existing regulations, is authorized, either in the investigation of cases referred to him for report by the judge, or of cases pending before him in conformity to the rules contained in Section 22, Regulation X. 1813, to examine witnesses on oath; or whether it is not necessary that the collector should obtain the sanction of the judge for his administering the oaths to witnesses in the investigation of such cases.

*To the Judge and Magistrate of Zillah Cuttack, in reply to the above, dated the
5th June, 1816.*

I am directed by the Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 30th ultimo, and to acquaint you, that under the provisions of Section 22, Regulation X. 1813, which suppose a charge or information upon oath, and direct that the investigation shall be conducted by the collector or other public officer intrusted with the charge of the *abkaree mohaul*, the Court are of opinion, that such officer is empowered to administer an oath, in cases within the provisions referred to.

June 5, 1816.

From the Judge of Zillah Allahabad, dated the 2d July, 1816.

I request you will obtain for me the orders of the superior Court, on the following points; 1st. Can a regular suit respecting the proprietary right to land, in which the amount of suit is more than 200 Rupees, be referred by the court to arbitration, under Section 3, and clause 2 of Section 2, Regulation VI. 1813, which direct that the rules of Regulation XXI. 1803, should be held applicable to such references? 2ndly. Can a regular suit, in which the amount may be 200 Rupees, or less, respecting the property of land, be referred by the Court to arbitration, under the provision of Section 3, Regulation VI. 1813, provided the parties make application for that purpose?

To the Judge of Zillah Allahabad, in reply to the above, dated the 17th July, 1816.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 2d instant, and to acquaint you, in reply, that the terms of Section 2, Regulation VI. 1813, appearing to be clear and express upon the subject of the questions referred for the consideration, the Court, previously to returning any distinct answers to them, desire you will state what grounds of doubt have occurred to occasion the reference.

From the Judge of Zillah Allahabad, in reply to the above, dated the 26th July, 1816.

I have the honor to acknowledge the receipt of your letter, under date the 17th instant.

It having been the practice of this Court, in the time of my predecessors, to refer to arbitration suits respecting the property in land, &c. whatever might be the amount, and it appearing to me that the limitation of the amount of suits to the sum of 200 Rupees was a fundamental rule of Regulation XXI. 1803, and therefore applicable by clause 2, Section 2, Regulation VI. 1813, to all suits referred to arbitration under the provisions of that section, I was induced to make the reference contained in my letter of the 2d instant, that I might be guided by the orders of the superior Court in the determination of several suits now pending in this court, which had been referred to arbitration, although the amount of them exceeded the sum of 200 Rupees.

To the Judge of Zillah Allahabad, in reply to the above, dated the 7th August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 26th ultimo.

The Court observe that Section 3, Regulation XXI. 1803, relates to the appointment of a single arbitrator in suits not exceeding 200 Rupees. But Section 2 applies expressly to suits exceeding that amount.

The provisions of this regulation being extended generally to suits respecting property in land or limited tenures therein, by Regulation VI. 1813, the Court are of opinion, that under Section 2 of the latter regulation, all suits of this description may be referred to arbitration for whatever amount.

August 7, 1816.

No. 253.

1803
Reg. XXI.
Bengal 1703
Reg. XVI.
1813
Reg. VI

No. 254.

1800
Reg. V.
Secs. 14 and 17.*From the second Judge of the Benares Court of Appeal, dated the 15th July, 1816.*

I submit a copy of a proceeding of the judge of the city of Benares, dated the 14th ultimo, and of a proceeding of this court, dated the 10th instant.

2. It is certain, as urged by Mr. Bird, that Section 24, Regulation XLIX. 1803, the first clause of which was cited in the acting register's letter of the 29th of August, 1811, as authorizing a special appeal in summary suits for revenue, is rescinded *in toto* by the second section of Regulation XXIV. 1814; but I confidently trust, the Sudder Dewanny Adawlut will see ground for deciding that the provisions of Regulation XXVI. 1814, for the admission of special appeals, are not exclusive of summary suits of the description abovementioned; as, considering the hasty and superficial inquiry upon which these decisions are usually passed, I think it would be highly mischievous and unjust to leave the defendants of these suits in all cases without any remedy, but that which is pointed out in Section 17, Regulation V. 1800, and Section 35, Regulation XXVIII. 1803.

To the Benares Provincial Court, in reply to the above, dated the 31st July, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your second judge, dated the 15th instant, with its enclosures.

2. Upon the general question therein referred, the Court are of opinion, that if the summary judgment passed by the city judge, be within his competency under the provisions of Section 14, Regulation V. 1800, an appeal to the provincial court, whether regular or special, is precluded by Section 17 of that regulation.

3. But if it should appear upon the face of the summary judgment, that the city judge has exceeded his legal competency, a summary special appeal would lie to the provincial court, in conformity with established usage, and the reason and necessity of the case, (although not expressly provided for by any regulation,) with a view to correct the irregularity without the expense and delay of a regular suit.

July 31, 1816.

No. 255.

1812
Reg. V Sec. 15.*From the Judge of Zillah Rungpore, dated the 11th August, 1816.*

I beg to be informed, whether, in the opinion of the Sudder Dewanny Adawlut, the provisions of Section 15, Regulation V. 1812, can be considered as applicable to cases in which the *zemindars* and their representatives attach the *jotes* of their tenants, or oust them at the end of the year for disputed arrears of rent, accruing on notices served on the cultivators in the manner described in Sections 9 and 10 of the above regulation.

2. I make this reference in consequence of frequent applications being made to me by the *ryots*, for injunctions upon farmers and others to refrain from ousting them from their *jotes*, the petitioners being ready to pay the amount of such part of the demand against them as they admit to be legal into court, and to give security, and contest the justice of the remaining part of it, in the manner provided for in Section 15, Regulation V. of 1812.

To the Judge of Zillah Rungpore, in reply to the above, dated the 21st August, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting the opinion of the Court, whether

the provisions of Section 15, Regulation V. 1812, can be considered applicable to cases, in which a landholder may attach the *jote* of his tenant, or oust him at the end of the year for a disputed arrear of rent.

2. In reply, I am directed to state, that although the provisions of the section cited apply directly to the case only of an attachment of property for an alleged arrear of rent, the spirit and equity of the rule must, in the judgment of the Court, be considered applicable to the case put by you, supposing the requisite conditions, as specified in the section above mentioned, to be performed by the tenant for bringing the question of rent in dispute to a speedy determination in the civil court.

August 21, 1816.

*Extract from a letter to the second Judge of the Bareilly Court of Circuit, under date the
21st August, 1816.*

4. With respect to the general mode of procedure to be observed by a court of circuit, when neither prosecutor nor witnesses may attend during the session, the Court are of opinion that, in pursuance of the spirit and intention of Section 17, Regulation VII. 1803, the trial should be postponed in the first instance to the next circuit, with instructions to the magistrate to adopt every practicable measure for causing the attendance of the prosecutor and witnesses; after which, if no sufficient reason appear for again postponing the trial, it should be brought on, and the prisoner discharged, with or without security, as may appear proper in consideration of the magistrate's proceedings on the commitment.

August 21, 1816.

To the Judge of Zillah Beerbboom, dated the 4th September, 1816.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 29th ultimo, and to observe in reply, that Regulation V. 1812, contains no provisions for a summary suit to compel *ryots* to take *pottahs* and give *caboolets*; but that landholders may proceed in conformity with Section 5, Regulation IV. 1794, and Sections 9 and 10, Regulation V. 1812.

September 4, 1816.

To the Calcutta Court of Circuit, dated the 23rd September, 1816.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from your officiating judge, dated the 16th instant, and in reply to communicate to you the opinion of the Court, that the native doctors attached to the *zillah* and city jails must be considered to fall within the general description of subordinate officers of the criminal jails, mentioned in the 2d clause of Section 7, Regulation XVII. 1816.

September 23, 1816.

No. 256.

1803
Reg. VII Sec. 17.
Bengal, 1793
Reg. IX. Sec. 49.

No. 257.

1812,
1794.
Reg. IV S. 5.
Reg. V
S. 9 and 10.

No. 258.

1816.
Reg. XVII.
Sec. 7, C. 2.

No. 259.

Reg. IX. Sec. 19.
1807.*Extract of a letter to the Calcutta Court of Circuit, dated the 31st October, 1816.*

9. The Court think it necessary to notice the remarks communicated for the guidance of the magistrate of Nuddea, in the 14th paragraph addressed to him by your fourth judge on closing the session of the district.

10. These remarks are concluded in the following terms: "It is almost always desirable, that though a special power is given to the magistrate to convict, without trial, of cattle stealing, still the trial should not be dispensed with, unless on very strong special grounds. Where such grounds do not exist, the court of circuit will of course quash the magistrate's conviction, and direct a trial in the ordinary course."

11. But the Court of Nizamut Adawlut cannot admit that a conviction upon a trial before the magistrate, on the result of which he is expressly authorized by Section 19, Regulation IX. 1807, to pass sentence of punishment to the extent specified in that section, is liable, on the grounds stated by Mr. Watson, (viz. as not being "a regular trial before a judge, aided by his law officer,") to be impeached as "a conviction without trial."

12. Nor, under the construction of the regulations in force which was communicated in the 10th paragraph of a letter addressed to you, by order of the Nizamut Adawlut, on the 16th February last, (viz. "that under the authority vested in the magistrates by Section 19, Regulation IX. 1807, they must be left to the exercise of their discretion in disposing finally of all cases of theft, which may not appear to them to require a more severe punishment than they are empowered to inflict under that section,") would it, in the judgment of the Nizamut Adawlut, be competent to a court of circuit, to quash a sentence of conviction and punishment, passed by a magistrate under the discretion vested in him by the section referred to, merely on the ground of his having tried a case of theft, which, in the opinion of a court of circuit, should have been brought before that court, although it would be the duty of a judge of circuit, in pursuance of Section 63, Regulation IX. 1793, to report the magistrate's conduct to the Nizamut Adawlut, if it should appear that he had been guilty of any serious and wilful misconduct in the exercise of the powers intrusted to him, or in cases of mere error of judgment, to point out the same to him for his future guidance.*

October 31, 1816.

No. 260.

Reg. XXIII.
Sec. 49, C. 2.
1814.*To the Judge of Zillah Chittagong, dated the 26th December, 1816.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the acting judge, dated the 19th August last, and to acquaint you, that under the second clause of Section 49, Regulation XXIII. 1814, (extended to the *sudder ameens* by Section 73 of that regulation,) the native commissioners are entitled to the full amount of stamp duty paid on the institution of the suit, in all cases adjusted before them by *razeenamahs*.

2. This point was determined by the Court, on the 15th June, 1815, in answer to a similar reference from the judge of Agra.†

December 26, 1816.

* Sentences, however, passed by the magistrates under Regulation XII. 1818, are repeatedly quashed, under Section 6 of that regulation; and the Court's Circular Order, dated the 16th of April, 1819.

† See No. 212, page 68.

To the Benares Provincial Court, dated the 26th December, 1816.

In compliance with the request contained in your second judge's letter of the 17th instant, the questions therein stat'd, relative to the right of a pauper to file a *vakalutnamah* upon plain instead of stamp paper of the prescribed value, has been submitted to the consideration of the Court of Sudder Dewanny Adawlut; and I am now directed to communicate to you the opinion of the Court collectively, that in all cases when a pleader may be appointed by a party, the *vakalutnamah* must be drawn out on stamp paper; *vakalutnamah*'s not being included in Section 8, Regulation XXVIII. 1814, which specifies the stamp duties from which paupers are exempted.

2. In the cases specially provided for by the second clause of Section 7 of the regulation in question, viz. where the pleader may have been appointed by the court, no *vakalutnamah* is of course necessary. But the Court do not consider this clause applicable to any case in which a *rakeel* is appointed by a party.

December 26, 1816.

Extract from a letter to the Bareilly Provincial Court, under date the 26th December, 1816.

2. Under the powers vested in single judges of the provincial courts by the third clause of Section 4, Regulation XIII. 1810, to determine on the admission or rejection of applications for special appeals to those courts, the order of a single judge, holding a regular sitting of the court, for the admission of a special appeal, must, in the judgment of the Sudder Dewanny Adawlut, be deemed conclusive, in like manner as if it had been passed by two or more judges of the provincial court.

3. This point has been already determined by the Court, under date the 31st July last, on a reference from the second judge of the Dacca provincial court.

4. With regard to the mode of proceeding adopted by your senior judge in the two cases noticed in the present reference, I am directed to observe, that as the opinion of the senior judge, on the competency of the court, at large to revise the grounds on which the special appeal had been admitted by a single judge, differed from that of the third judge, the question should have been brought before the fourth judge, (the second judge not being at the *sudder* station,) in conformity with the provisions of Section 9, Regulation XXV. 1814.

December 26, 1816.

From the Patna Court of Appeal, dated the 8th January, 1817.

Doubts have been entertained of the meaning of Section 8, Regulation XVII. of 1806, and it has been construed different ways, which has occasioned contradictory decisions. We therefore request to be favored with the opinion of the Sudder Dewanny Adawlut, whether the period of one year, allowed for the redemption of a mortgage or conditional sale, is to be calculated from the date of the *perwannah* issued to the mortgager or seller; or from the day of his being served with the *perwannah*. If the latter, it is possible

No. 261.

1814
Reg. I Sec. 18.
Reg. XXVIII.
Sects 7 and 8

No. 262.

1810.
Reg. XIII.
Sect. 4, C. 3.

1814
Reg. XXV. Sect. 9.

No. 263.

1806.
Reg. XVII. Sec. 8

that the mortgager or seller may be absent, or may withdraw himself to prevent his being served with the *peruannah*, and the regulation in question makes no provision for this: it therefore would be desirable that the Sudder Dewanny Adawlut should also point out the course which is to be pursued in such a case.

To the Patna Provincial Court, in reply to the above, dated the 23d January, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 8th instant, and in reply to communicate to you the opinion of the Court, that the period of one year, allowed for the redemption of mortgages or conditional sales by Section 8, Regulation XVIII. 1806, must be calculated from the date of the written notification, as expressly mentioned in that section, as well as in the Persian translation thereof.

January 23, 1817.

No. 264.

1816
Reg. XV.
Sec. 10, C. 2.

To the several Provincial, Zillah and City Courts, dated the 29th January, 1817.

A question having arisen, whether the provisions contained in Regulation XV. 1816, were intended to include officers and soldiers belonging to native invalid corps, the Court of Sudder Dewanny Adawlut deemed it proper to ascertain the sentiments of Government upon the point, as being immediately connected with the military department; and it being possible, that the native invalids attached to invalid battalions, [who are understood to be employed as guards and sentries,] might be considered in that department as coming within the description (in Section 10) of "native officers or soldiers entertained in regular corps, and on the actual strength of the army on the establishment of the presidency at Fort William."

2. You will receive herewith, for your information and guidance, an extract (paragraph 2), of a letter from the Secretary to Government in the judicial department, dated the 17th instant: together with extract of a letter from the acting adjutant general, from which you will observe, that the native invalid battalions are considered within the description above mentioned, and consequently entitled to benefit of the regulation in question.

*January 29, 1817.**

No. 265.

1799
Reg. VII. Sec. 15.

To the Calcutta Provincial Court, dated the 19th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3d instant, with the papers accompanying it, relative to the summary suit—Obeychurn Bonerjia and others, plaintiffs, *versus* Ramkanye Badooree and others, defendants.

2. With regard to the general question referred in the second paragraph of your letter, viz. "whether in a suit instituted under the provisions of Regulation VII. 1799, the judge is warranted in deputing an *ameen*, for the purpose of local investigation;" the Court are of opinion, that although such deputation should not be ordered in summary suits without necessity, the *zillah* judge is not restricted by any provision in Regulation VII. 1799,

* For another Construction of this date, see No. 300, page 120.

from directing a local inquiry, when it may appear to him indispensably requisite for the purpose of ascertaining the rent demandable in the case.

3. In the present instance, it is stated by the defendants, and does not appear to be denied by the plaintiffs, that the *cabuleat* of the former stipulates for the payment of rent according to an actual measurement of the lands; and the *zillah* judge considered it necessary, in consequence, to depute an *ameen* for the purpose of making a measurement and *junnubudy* of the lands, limiting his commission to fifteen days.

4. Without going into a consideration of the merits of the case, the Court have no hesitation in stating their opinion, that the *zillah* judge was, under the above circumstances, competent to order the deputation of an *ameen*, and the plaintiff's having in consequence declined to proceed on the summary suit, the judge was of course at liberty to dismiss it, subject to the institution of a regular suit.

5. You are desired to transmit a copy of this letter for the information of the judge of *zillah* Nuddea, and are, at the same time, authorized to revise the orders passed by your second and fourth judges, on the 18th December, 1816.*

Revision of sum-
mary decisions

February 19, 1817.

To the Calcutta Provincial Court, dated the 19th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your first, second, and officiating judges, dated the 3d instant, with the paper accompanying it, relative to a question referred at the request of judge of *zillah* Nuddea, viz. whether in a summary suit instituted on the 14th March, 1816, under Regulation XLIX. 1793, and struck off the file on the 27th of that month, in consequence of the non-attendance of the plaintiff, the *zillah* judge was competent to receive the suit on the 10th April following, (being satisfied with the reasons assigned by the plaintiff for his non-attendance,) and to proceed upon it under the provisions of the regulation above mentioned.

2. This appears to the Court, from the letters and proceedings of the judge of *zillah* Nuddea, to be a more accurate statement of the question referred by Mr. Paton, than that which is given in the 2d paragraph of your letter, viz. "whether he is competent to revive a summary suit, which he has once determined, and to pass a second decree," which might be understood to mean the revival of a suit already determined on its merits.

3. With regard to suits dismissed on account of non-attendance and neglect by the plaintiff, the Court observe, that no particular rule has been established for summary suits; but that, with respect to regular suits dismissed under Section 10, Regulation IV. 1793, the *zillah* and city courts were informed by a circular notice from the Sudder Dewanny Adawlut, under date the 22d August, 1795, that the plaintiffs in causes dismissed under this rule have the option of reinstating them under the regulations.

4. Applying the principle of this construction to summary suits, and considering that no fee is payable on the institution of such suits; that the suit was originally struck off the file without calling on the plaintiff to show cause for not having attended and proceeded in

No. 266.

1793.
Reg. XLIX.
1803
Reg. XXXII.

* The orders of the 16th Dec 1816, reversed the decision of the *zillah* judge, and directed him to re-admit the suit, and decide it in a summary manner, without deputing an *ameen*.

the suit ; that little delay occurred in the plaintiff's subsequent attendance ; and that the reasons stated by him for his previous non-attendance appeared satisfactory, the Court are of opinion that the judge of *zillah* Nuddea was fully competent to revive and proceed upon the summary suit referred to in the papers accompanying your letter , viz. that of Chedam Poraee, and others, plaintiffs, *versus* Huneeff Biswas, defendant.

Revision of summary decisions.

5. You are accordingly desired to transmit a copy of this letter to the judge of *zillah* Nuddea for his information, and are, at the same time, authorized to revise the orders passed by your second and fourth judges on the 18th December, 1816.

February 19, 1817.

No. 267.

1803.
Reg. XXXVII.
Sec. 3, C. 5
Bengal, 1793.
Reg. XXXI.
Sec. 3, C. 5.

From the Judge of Zillah Etawah, dated the 11th February, 1817.

I have the honor to submit for such order as the Court of Sudder Dewanny Adawlut may be pleased to pass thereon, a copy of a petition presented to this court by the *vakeel* of Government, at the suggestion of the commercial resident at Etawah, requesting to be informed in what mode *tulubanah* on warrants issued in conformity with clause 5, Section 3, Regulation XXXVII. of 1803, is recoverable.

To the Judge of Zillah Etawah, in reply to the above, dated the 26th February, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter dated the 11th instant, with its enclosure; and in reply, to inform you, that if the peons employed under the fifth clause of Section 3, Regulation XXXVII. 1803, be not in the receipt of a salary from Government, the Court consider any *tulubanah* payable to them to be recoverable from the person failing in his engagement, whether for the delivery of saltpetre, or any other article of the Company's investment.

2. The Court are further of opinion, that if the amount of such *tulubanah* be not paid on demand, it may be debited to the defaulter by the commercial resident, and deducted from any sum due to him.

3. The Court at the same time observe, that the regulations do not contain any special provision for enforcing payment against the defaulter in such cases, and that consequently recourse must be had, when necessary, to the general means of recovery by a suit in the civil court.

February 26, 1817.

No. 268.

1814.
Reg. XXIV.
Secs. 9 and 12.

To the Secretary to Government in the Judicial Department, dated the 5th March, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 21st ultimo, with its enclosure, relative to the competency of registers, vested with special powers under Sections 9 and 12, Regulation XXIV. 1814, to refer summary suits for adjustment to the collectors.

2. The Court are of opinion, that the provisions in the existing regulations, which authorize a reference of civil suits, regular or summary, to the collectors for adjustment: (viz. Section 13, Regulation VIII. 1794; clause fourth, Section 15, Regulation VII. 1799;

clause fourth, Section 14, Regulation V. 1800; clause fourth, Section 32, Regulation XXVIII. 1803; Section 13, Regulation II. 1805; Section 21, Regulation V. 1812; and Section 2, Regulation VII. 1813,) were meant to be exercised by the judges of the *zillah* and city courts; but not by the registers of those courts.

3. In support of this construction, the Court observe, that several of the regulations adverted to require the judge to refer the suit to the collector for adjustment, in cases only wherein neither themselves nor their registers may be able to try and determine the same without delay. And with regard to summary suits, it is provided in Section 13, Regulation II. 1805, that "all summary inquiries and processes are to be conducted, as far "as practicable, by the judges in person, with the assistance of the collectors in adjusting "accounts of arrears of rent between proprietors and farmers of land and their under- "tenants, as expressly authorized by Section 15, Regulation VII. 1799, and Section "32, Regulation XXVII. 1803." It is added, that "whenever, from the urgency of other "depending causes and business before the *zillah* and city judges, they may not be able to "make the summary inquiries above noticed, with the expedition requisite in such cases, they "are authorized to refer the same to their registers, to proceed thereupon according to the "regulations;" viz. as the Court understand the rule, to try the merits of the case, not to refer it to the collector, which the judge might have done if such reference had been intended.

4. Under the seventh clause of Section 12, Regulation XXIV. 1814, registers stationed at a place not being the station of the *zillah* or city *dewanny adawlut*, may be invested with original jurisdiction, within local defined limits, "for the cognizance and trial "of summary suits." But it is provided in the next clause, that "in receiving and trying "such summary suits, the register shall possess the same authority, and shall proceed in "the same manner as if the case had been referred to him by the *zillah* or city judge."

5. The Court, therefore, do not consider the register competent to refer to the collector any original summary suits instituted under the section above mentioned, but are of opinion that he should try the same himself, if cognizable by him, whether within the description of suits referrible to the collector, under Section 21, Regulation V. 1812, or otherwise; that rule being so far modified by the subsequent provisions in clauses seventh and eighth of Section 12, Regulation XXIV. 1814.

March 5, 1817.

To the Dacca Provincial Court, dated the 26th March, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your register, dated the 19th instant, with its enclosure from the judge of *zillah* Mymensingh, recommending the appointment of Mr. Stephens, the civil surgeon of that station, to the office of *sudder ameen*.

2. Under the express terms of Section 64, Regulation XXIII. 1814, that "in the future nomination of individuals for the office of *sudder ameen*, the *zillah* judges are not restricted to persons of any particular class or religious persuasion, but are required

No. 269.

1814.
Reg XXIII
Sec. 64.

"carefully to select such individuals as may be best qualified for the trust," the Court are of opinion that all individuals duly qualified for the trust, are eligible to the office of *sudder ameen*, and under the testimony given by you and by the *zillah* judge to the qualifications of Mr. Stephens, the Court are not aware of any objection to the proposed appointment.

March 26, 1817.

No. 270.

1803
Reg III Sec 7
Reg VIII Sec 25.
Bengal, 1793
Reg. IV. Sec 6

To the Judge of Zillah Agra, dated the 26th March, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting their instructions, regarding the power of the civil courts "to enforce the production of a *muhajun's* books, which are necessary in cases before them."

2. The Court are of opinion, that in all cases wherein it may be necessary to call upon a witness to produce documents of the nature referred to, which are known, or presumed on strong and sufficient grounds, to be in his possession, if the witness refuse or neglect to produce the documents required from him, and fail to assign satisfactory cause for not producing the same, he is liable to be proceeded against in conformity with the spirit of the rules for compelling witnesses to give their testimony, contained in Section 7, Regulation III. and Section 25, Regulation VIII. 1803.

3. If, therefore, you have just reason to be satisfied that the witness, in the case which forms the subject of your letter, possesses documents material to the elucidation of the merits of the cause, the Court are of opinion, that you will be warranted in proceeding against him in conformity with the provisions above cited, viz. by imposing a fine not exceeding 500 rupees, and detaining him in custody until he shall consent to produce the documents required.

March 26, 1817.

No. 271.

1803
Reg XXXV.
Sec 16.

To the Bareilly Court of Circuit, dated the 26th March, 1817.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from your fourth judge, dated the 7th instant, in reply to the letter addressed to you under their orders of the 12th ultimo.

2. The several magistrates being vested with a concurrent jurisdiction by Section 16, Regulation XXXV. 1803, in the cases therein provided for, the Court of Nizamut Adawlut are clearly of opinion, that a magistrate, in whose jurisdiction a person may be apprehended on a criminal charge, is competent to take cognizance of the charge, and to commit for trial before the court of circuit, although the crime may have been perpetrated in another jurisdiction, if he should think it advisable to do so, in preference to sending the prisoner to the magistrate of the district in which the offence was committed.

3. It may, the Court admit, be in general more convenient to prosecutors and witnesses, that the cases should be tried in the district where the crime has been committed. But in the present instance, the Court conclude, that the prosecutor and witnesses were in

attendance at Cawnpore, in which case there does not appear to have been any sufficient reason why the trial should not have been proceeded upon by Mr. Elliott at the session of that district.*

March 26, 1817.

From the Benares Provincial Court, dated the 27th March, 1817.

By Section 12, Regulation XIII. 1808, and the rules therein alluded to, in appeals from decrees for money or other movable property, the appellant has a right to stay the execution of the decree, by giving good and sufficient security.

2. That Section is no where rescinded: yet in Clause 5, Section 46, Regulation XXIII. 1814, the word "empowered" being used, the judges seem to be of opinion that in appeals from the *moonsiffs*, even in cases of money or other movable property, they have a discretion to reject security tendered by the appellant, and to direct the execution of the decree appealed from.

3. Against orders to this effect petitions have been presented to this court, and as the unrescinded Section of Regulation XIII. 1808, appears to us to cast some doubt upon the intent of the clause cited from Regulation XXIII. 1814, we request to be furnished with the Sudder Dewanny Adawlut's instructions upon the point.

To the Benares Provincial Court, in reply to the above, dated the 9th April, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your senior and late second judges, dated the 27th ultimo, and to acquaint you in reply, that the Court do not understand the word "empowered," used in the 5th clause of Section 46, Regulation XXIII. 1814, as intended to modify the general rule prescribed by Section 12, Regulation XIII. 1808, which is still in force.†

April 9, 1817.

From the Judge of City Benares, dated the 12th May, 1817.

I beg leave to submit the accompanying papers for the consideration and orders of the Court of Sudder Dewanny Adawlut.

Copy of a petition from Hurbunslol, Brijruttun Dos, and Luchmun Dos, with the orders annexed.

Copy of the proceedings of the additional register, Mr. S. M. Duntze, dated the 8th instant.

2. The petitioners are defendants in a civil suit referred for trial to the additional register, and that officer having refused to receive their answer to the plaint, I recalled the suit, and at the same time requested him to name the regulation, under which he considered himself authorized to proceed to try it *ex parte*, notwithstanding the appearance of the defendants.

3. My competence to make this request Mr. Duntze has thought proper to question, and assuming to himself an authority with which he thinks I am not invested, he has

No. 272.

1808
Reg. XIII. Sec 12.
1814.
Reg. XXIII.
Sec. 46. C 5.

No. 273.

1814.
Reg. XXIV.
Sec. 6, C. 2.
1796
Reg. X. Sec. 2.

* But see the rules relative to Venue, contained in Regulation VIII. 1822.

† See No. 384, page 106.

proceeded to call upon me to name the regulation that authorizes me to call upon him to name one. Of this authority no doubt, I imagine, will be entertained by the superior Court. At all events, if there is no such authority in me, there certainly can be none in Mr. Duntze, and it is not a little curious, that while questioning the competence of his official superior to exercise it, he should nevertheless be fully satisfied that he is competent to exercise it himself.

4. Should the Court concur with me in opinion upon this point, I beg that the necessary orders may be issued for Mr. Duntze's information and guidance.

To the Judge of the City of Benares, in reply to the above, dated the 21st May, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 12th instant, with its enclosures.

2. Upon the question stated by your register, I am directed to acquaint you for his information, that as all decisions and orders of the register of a *zillah* or city court are appealable to the judge, the Court are of opinion, that the latter is fully competent to call upon the register for an explanation of any order passed by him, which may appear to the judge in opposition to, or unwarranted by the regulations in force.

3. The Court are further of opinion, that the register is not authorized to call for an explanation of orders passed by his official superior; but that if the requisition of a judge to his register should appear to the latter unauthorized by the regulations, he is at liberty to state his objections to the judge, in a respectful manner, and in the English language, according to the spirit of Section 2, Regulation X. 1796, and the Court's circular instructions of 18th April, 1811.*

4. In the present instance, the Court are concerned to observe, that the Persian *roobakaree* of Mr. Duntze was not only in opposition to the circular order above noticed, but also obviously deficient in the respect due to a superior court.

5. You are desired to transmit a copy of this letter to your register; and require from him a more careful observance in future of the rules prescribed for his guidance.

May 21, 1817.

No. 274.

1814.
Reg. I. Secs. 11
and 14.

To the Acting Register of Zillah Bundelcund, dated the 18th June, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, without date, but received on the 16th instant with the papers therein mentioned, relating to cause, Seetaram and Jeewunram, plaintiffs, *versus* Rajaram and others, defendants.

2. In reply to the question stated in your letter, I am directed to communicate to you the opinion of the Court, that the valuation of land paying revenue to Government, assumed in the first clause of Section 14, Regulation I. 1814, for regulating the stamp duty on plaints in civil suits, is not applicable to the valuation of landed property in transactions between individuals coming within the provision of Section 11, Regulation I. 1814.

* See printed Cir. Ord. S. D. A. No. 26, page 18, part 1st, Vol. I, Baptist Mission Press Edition.

3. The Court are further of opinion that a mortgage bond, or deed of mortgage, such as that submitted with your letter, may be considered within the provisions for bonds, or other instruments for a specific sum of money: consequently that the deed executed on stamp paper of two Rupees value, on a loan of 1000 Rupees, is regular and admissible in evidence.

June 18, 1817.

To the Judge of Zillah 24-Pergunnahs, dated the 2d July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 26th ultimo.

No. 275.

1814
Reg I Sec. 11.

2. In answer to the first question submitted in that letter, I am directed to communicate to you the opinion of the Court, that account books (*khatabuhaes*) cannot be considered to fall within the description of any of the documents required to be written on stamp paper, by the provisions of Section 11, Regulation I. 1814.

3. Upon the subject of the concluding paragraph of your letter, I am directed to transmit for your information, the enclosed copy of a letter written to the acting judge of Rajshahye, on the 17th February, 1816.*

July 2, 1817.

To the Acting Judge of Zillah Nuddea, dated the 2d July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th ultimo.

No. 276.

1814
Reg XXIII.
Sec. 25.

2. In reply to the question submitted in that letter, I am directed to communicate to you the opinion of the Court, that the fourth clause of Section 25, Regulation XXIII. 1814, which provides that "the answer, reply, and rejoinder in suits tried by the *munsiffs* are "not required to be written on stamp paper," and which is extended by Section 11, Regulation III. 1817, "to original suits and appeals not exceeding in amount or value the sum of "64 Rupees," which may be instituted in the *zillah* or city courts," must be considered applicable to all pleadings in suits within the above limitation, including supplementary pleadings, *razeenamahs*, *soolehnamahs*, and *rufanamahs*, which are specified in Section 17, Regulation I. 1814, with the answer, replication, and rejoinder.

July 2, 1817.

From the Judge of Zillah Etawuh, dated the 14th June, 1817.

I beg leave to solicit the opinion of the Sudder Dewanny Adawlut on the following points.

1. Are cases, which may be brought before the civil courts, under the provisions of Sections 9 and 10, Regulation XXXIV. of 1803, to be disposed of by a summary inquiry and decision; or are they to be considered as subject to all the rules prescribed for regular suits?

No. 277.

1803.
Reg XXXIV.
Secs 9, 10, and 12.
Bengal, 1793
Reg XV.
Secs 10 and 11.
1798
Reg I Sec. 2.
1806
Reg. XVII. Sec. 7.

* See No. 233, page 80.

† Extended to original suits and appeals not exceeding the amount or value 150 Rupees, by Regulation X. 1829, Schedule B, Article 9.

2. Is the specification of a stipulated period in deeds of mortgage, not coming under the denomination of *bye-bil wuffa*, legal and binding on the mortgager; or may the mortgaged property be redeemed at any time, under Section 9 of the above regulation, whenever the principal sum, with interest thereon, shall have been liquidated by the mortgager, although the mortgage bond may contain a condition that the mortgagee shall remain for a stipulated period in possession of the mortgaged property?

3. In the event of any objection or demur on the part of the holder of a deed of mortgage and conditional sale, to the surrender of the mortgaged property, which may be in his possession, in such case are suits instituted under Section 12, Regulation XXXIV. of 1803, and Section 7, Regulation XVII. 1806, to be investigated and decided in a summary way or otherwise?

To the Judge of Zillah Etawah, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 14th ultimo, and in answer to the first question therein stated, (respecting cases of mortgage within the provisions of Sections 9 and 10, Regulation XXXIV. 1803,) to acquaint you, that the Court are not aware of any provision in the regulations for a summary suit in the cases therein referred to.

2. Upon the second question submitted by you, (concerning the legal operation of a stipulated period in deeds of mortgage, not coming under the denomination of *bye-bil wuffa*.) I am desired to acquaint you, that the Sudder Dewanny Adawlut can offer no opinion on the legality of specific deeds or mortgage, without having such deeds judicially before them.

3. In answer to the third question proposed in your letter, the Court direct me to refer you to their circular instructions, under date the 22d July, 1813.*

July 9, 1817.

No. 278.

1799.
Reg. VII
See. 15, C. 4.

From the Judge of Zillah Dinagepore, dated the 24th April, 1817.

I beg leave, through you, to inform the Court of Sudder Dewanny Adawlut, that under an impression that the practice of under-farmers, who rent *malguzaree* lands from actual proprietors, re-letting them to others, and these latter again to others, so that the person with whom the actual cultivators have to deal may be many removes from the under-farmer holding immediately from the actual proprietor, has a tendency injurious to the welfare of the cultivators: and it appearing to me, that this practice had met with encouragement from the practice of the *dewanny adawlut*, in its having admitted under-farmers of every description to the benefit of a summary suit instituted under Section 15, Regulation VII. 1799, which section appeared to me to relate, so far as farmers are concerned, to *sudder* farmers only, I, agreeably to the above impressions, dismissed the suits of several under-farmers, who had sued for the recovery of arrears of rent by virtue of that section. A party in one of the dismissed suits appealed against my order, and I have this day received a precept from the court of appeal, together with the proceedings

* See printed Cir. Ord. S. D. A. No. 37, page 26, part 1st, Vol. I. Baptist Mission Press Edition.

of that Court, informing me that my order has been reversed, and purporting, as I understand the proceedings, that all suits of the nature described are triable under the provisions of the aforesaid section. The proceedings designate the appellants, or petitioners, *dur-i-jaradars*; but do not teach, in a manner that satisfies my mind, how my order is otherwise than strictly conformable with the regulation with which the Court orders me to conform.

2. I esteem the matter important, and am induced to submit it for the consideration and orders of the Court of Sudder Dewanny Adawlut, anticipating that, should I happen to be right, the Court, by the support they will afford me, will disown a practice injurious to the welfare of the cultivators of the soil.

3. I beg leave to enclose a copy of the proceedings of the court of appeal which are above mentioned.

To the Judge of Zillah Dinaugore, in reply to the above, dated the 9th July, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th April last, with the *robukarre* of the Moorshedabad provincial court therein referred to, in the case of Kishen Mohan Rai and others, farmers of Turuf Rughoonathpore.

2. It appears to the Court, that the term "farmer of land" in the fourth clause of Section 15, Regulation VII. 1799, is used in a general sense, and includes the description of under-farmers described in your letter.

3. I am directed to add, that as you wished to obtain the determination of the Sudder Dewanny Adawlut upon the construction given by the provincial court, your reference should have been submitted through the channel of that court, in conformity with Section 2, Regulation X. 1796, and you are desired to observe that rule more carefully in future.

July 9, 1817.

To the Secretary to Government in the Judicial Department, dated the 9th July, 1817.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 20th ultimo, with copy of a letter from Mr. Blunt, acting superintendent of police in the lower provinces.

2. In criminal prosecutions of a public nature on the part of Government, which are now usually conducted by the *vakeel* of Government, the Court are not aware of any objection against employing the superintendent of police, or any other officer whom the Governor General in Council may judge it proper to appoint, (not being the committing magistrate,) to conduct the prosecution before the court of circuit, provided he be recognized as the prosecutor, or agent of Government for conducting the prosecution, and he not authorized to interfere, in any other capacity, in the trial before the court of circuit.

3. In cases of commitments made by the superintendents of police in their capacity of magistrates, the Court are of opinion, that, on a general principle, they should not be employed to conduct the prosecution before the court of circuit; though no objection would attach to the nomination of their assistants, or the assistants of the *zillah* and city magistrates, to manage the prosecution in such cases.

No. 279.

Rights of Superintendents of Police and Magistrates to attend trials before the court of circuit, as public prosecutors.

4. In the particular trial referred to by Mr. Blunt, the Court understood the commitment to have been made by him in his capacity of acting magistrate of the 24-Pergunnahs, and that his wish was, not only to be present at the trial before the court of circuit, but, as expressed in the 3d paragraph of his letter to the second judge of the court of circuit, "to assist in the conduct of the prosecution," and "to afford information that might be required by the court."

5. With respect to the attendance of the superintendent of police at any criminal trial before a court of circuit under the restriction stated in the last paragraph of Mr. Blunt's letter of the 12th ultimo, viz. abstaining from any irregular interference in the trial, the Court see no material objection to it, provided the stated restriction be strictly observed. It may indeed, the Court think, be considered a privilege claimable by the public officers, in common with all other persons, of being allowed to attend an open court, though such privilege would not, of course, extend to any recognition of them in their official capacity.

July 9, 1817.

No. 280.

1807
Reg. I Sec. 7.
1810
Reg. XIII
Sec. 4, C. 2.

To the Bareilly Provincial Court, dated the 28th August, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, submitting copies of the papers required in my letter of the 23d ultimo.

2. On consideration of the above papers, and of your letter of the 25th June, and its enclosures, the Court directed me to communicate to you the following observations and opinion.

3. The Court remark, that the original powers of single judges of the provincial courts, under the provisions of Regulation I. 1807, were much enlarged by Regulation XIII. 1810, and that the powers vested in two or more judges by Section 7, Regulation I. 1807, were modified by Section 4, Regulation XIII. 1810; the fourth clause of which defines the cases wherein two or more judges may abrogate the orders of a single judge; viz. on the trial of depending causes, and respecting "points connected with the trial of the suit before the court."

4. In the case under consideration, the order of your third judge, passed on the 22d February, 1817, whereby the sons of Bacharam, deceased respondent in an appealed cause decided by two former judges on the 14th August, 1812, were made answerable for the costs of suit adjudged against the respondents, appears to have been given by him in pursuance of the second clause of Section 4, Regulation XIII. 1810, and must therefore, in the opinion of the Court, be considered of the same force and validity as if it had been passed by two or more judges.

5. Viewing the order therefore as a final judgment perfecting the decree passed on the 14th August, 1812, the Court are of opinion, that it could not be regularly revised without the permission of the Sudder Dewanny Adawlut; but it appearing to be the opinion of your second and third judges, that there are grounds for revising the order in question, and taking a further *vyavastha* from the *pundit* on the Hindoo law applicable to the case, the Court authorize a review accordingly.

August 28, 1817.

To the Dacca Provincial Court, dated the 18th September, 1817.

I am directed by the Court of Sudder Dewanny Adawla to acknowledge the receipt of a letter from your acting register, dated the 10th instant, requesting their opinion as to the competency of a provincial court to enter into the merits of a suit appealed from the decision of a *zillah* judge, passed under Section 5, Regulation VI. 1813.

2. In reply I am directed to acquaint you, that the Court concur in the opinion which you have expressed on this question, viz. that the rule contained in Section 7, Regulation V. 1794, regarding appeals from the summary processes of the *zillah* courts, must be considered applicable to the summary judgments passed by them under Section 5, Regulation VI. 1813, and that consequently, where the decision of the *zillah* judge may have been passed in conformity with the provisions of that section, no appeal can lie to the provincial court, except on the irrelevancy of the regulation to the case appealed.

September 18, 1817.

*From the Additional Register at Ghazzeppore to the Benares Provincial Court, dated
7th September, 1817.*

I had the honor, on the 10th current, to forward a *roobacaree* in reply to a precept received from your court, certifying my having forwarded a copy of your order for the information and guidance of the acting collector, and likewise that the Nawab Syud Ubdooleh, late acting *tuhseetdar* of Bahia, is at large.

2. As however the order of your court appears to me to set aside the course prescribed by the regulations; as the present case is, I believe, the first of this nature which has occurred in the province of Benares; as the importance of it, with regard to the interests of Government, the authority of the collector and of the courts respectively, and the responsibility to which a judicial officer, who shall be found to exceed his competence in matters relating to the public revenue, may be held liable, appear to me to require that the course to be pursued, and discretion to be exercised by a judicial officer, on occasions of applications from the collector for the confinement of native revenue officers alleged to be defaulters should be clearly defined, I have taken the liberty of stating the reasons which appear to me to be against the validity of your order, and request you will be pleased to forward them, together with the papers of the case, for the information and orders of the superior Court.

First. It appears to me, that under Section 16, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the courts are not authorized to enter into any previous inquiry as to the justice of the demand against a *tuhseetdar*, or other officer, forwarded by the collector as a defaulter, but are bound by the tenor of that section straightway to commit him, until he shall pay the amount demanded, or adopt the course pointed out by Section 19 of that regulation.

Second. It appears to me, that when a public officer, forwarded by the collector as a defaulter, has furnished the prescribed security, he must bring a suit before the court by which he has been committed, to prove the injustice of the demand against him, although he may not have paid the demand, or any part thereof: and that the suit is to be tried as a summary suit, and therefore is cognizable by a *zillah* court under the provisions of

No. 281.

Reg VI. Sec. 5
1794
Reg. V. Sec. 7.

No. 282.

1794
Reg. III
Secs 16 and 19.
Benares, 1800
Reg. V Sec. 27.

Section 7, Regulation XIII. 1808, whether the amount thereof exceed or fall short of 5,000 Rupees.

Third. That the suit is to be brought to a hearing and decided upon, after examining the documents, and weighing the statements of both parties, and not on any *ex parte* exhibits or allegations.

Fourth. That if the alleged defaulter omit to bring a suit within the period prescribed, the amount claimed is to be immediately levied and paid over to the collector.

Fifth. That since the regulation directs that personal security alone shall be taken from *tuhseeldars* and others, and contains no provision for proceeding against the security, unless the principal shall not be forthcoming, the courts cannot, on a motion on the part of the collector, adopt any summary proceeding against the security, unless the principal shall have absconded.

Sixth. That Regulation XXI. 1806, in no ways affects the responsibility of the *tuhseeldars* with respect to the papers and public assets under their charge, or deprives the collector of the remedy allowed him by the laws existing at the time when that regulation was passed.

3. On the above grounds, it appears to me that your court has exceeded its competence, under the existing laws, in entering into a previous inquiry, and directing the total discharge of Ubdoollah, and I request the opinion of the superior Court may be taken on that point.

4. I have the honor herewith to forward the papers of my court in the above case, for the purpose of being transmitted to the *sudder*.

*Letter from the Benares Court of Appeal, dated the 6th October, 1817,
enclosing the above.*

By the desire of the additional register of Ghazeepore, we transmit an original letter of that officer, dated the 7th ultimo, with the Persian papers connected therewith.

2. Of our competency to pass the order of the 1st ultimo, to which Mr. Bird objects, we see no reason to doubt, and we are persuaded that if the collector pursues the course we prescribed, of urging Rooddeerram, the *malzamin*, to payment, the result will be perfectly satisfactory, both as regards the justice of the case, and as relates to the realization of the public revenue.

3. We see no sufficient ground for Mr. Bird's appealing from our order, and are of opinion that the regular course would have been for the collector of Ghazeepore, if he thought that order irregular, (which does not yet appear,) to have submitted his sentiments upon it to the commissioner of Benares and Behar, and have acquiesced in it, or appealed against it, as he might have been instructed from the Board to which he is subordinate.

4. For not entering into any detailed discussion of Mr. Robert Bird's letter, we beg leave to assign our total want of leisure from the regular and ordinary business of the appeal and circuit courts.

To the Benares Provincial Court, in reply to the above, dated 29th Dec. 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 6th October, with the proceedings and letter from the additional register stationed at Ghazeepore, therein mentioned.

2. The case referred to in these papers has been separately brought before the Court by a petition from the *Wazir* of Government, at the instance of the acting collector at Ghazeepore, and the orders of the Court thereon, passed on this date, will be communicated to you in the usual course from the Persian department.

3. It is sufficient, therefore, to note the several questions referred by the additional register at Ghazeepore, particularly those specified under the first and second heads submitted to the second paragraph of his letter; and in answer to these, I am directed to communicate to you the following sentiments of the Court.

4. The Court are of opinion, that in the cases provided for by Sections 16 and 19, Regulation III. 1794, (extended to Benares by Section 27, Regulation V. 1800,) the civil courts are not authorized, on the application of a collector for the confinement of a defaulting *tahsildar* or other native officer, in pursuance of Section 16, to proceed in any other manner than according to the provisions of that section and Section 19.

Secondly. In the event of the alleged defaulter's denying the justness of the collector's demand upon him, and giving the security required by Section 19, to institute a suit in 15 days against the collector to try the demand, the Court are of opinion, that under the declaration in Section 21, Regulation III. 1794, (that the rules in Regulation XIV. 1793, are to be considered applicable to such suits,) the suit in such cases must be instituted and proceeded upon as a regular suit.

5. The original papers which accompanied your letter, are returned herewith.

December 29, 1817.

Letter to the Benares Court of Circuit, dated the 29th December, 1817.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 28th ultimo, with its enclosures, and in answer to the general question therein referred, to communicate to you the opinion of the Court, that two or more judges of a court of circuit are fully competent, under the general powers vested in them by Section 23, Regulation IX. 1807, to annul an order passed by a magistrate imposing a fine on account of a contempt of court; as in all other cases, if the order appear from the magistrate's proceedings to be unjust.

2. The Court at the same time are of opinion, that, with a view to maintain a proper respect for the magistrate's office and authority, the courts of circuit should be cautious in rescinding orders passed by the magistrate for the punishment of contempts of court, stated to have been committed before the magistrate and in open court.*

December 29, 1817.

A Letter from the Judge of the City of Benares to the Benares Court of Appeal, dated the 8th September, 1817, enclosed in the following letter.

I have perused a copy of your letter to the register of the Sudder Dewanny Adawlut, dated the 27th March last, and of the register's answer thereto, on the subject of the word "empowered," in the 5th clause of Section 46, Regulation XXIII. 1814.†

No. 283.

1807.
Reg. IX Sec 23.

No. 284.

1805
Reg. XIII Sec 12
1814.
Reg. XXIII.
Sec 46, Cl. 5.

* See Section 5, Reg. XII. 1823

† See No. 272, page 97.

2. I am fully aware, that the word alluded to was never intended to modify the rule prescribed by Section 12, Regulation XIII. 1808; but the question is whether an appellant has, under that rule, a right to stay the execution of the decree of a *moonsiff* by giving security. The section declares, that decrees for money and other moveable property shall be stayed or enforced in cases of appeal according to the rules now established and by those rules, (see Section 24, Regulation XL. 1793, extended to Benares by Section 2, Regulation XXXI. 1795,) the judge of a *zillah* or city court has, in appeals from the *moonsiff*, a discretion to reject security tendered by an appellant, and to direct the execution of the decree appealed from, if he thinks proper.

3. In support of this opinion, I beg leave to subjoin the opinion of Mr. Fortescue, the late judge of Allahabad, extracted from the report of that officer to the Governor General, dated the 1st of September, 1814.

"The power of executing the decrees of the native commissioners and *sudder ameens* " pending a trial in appeal, is, under the regulations, discretionary with the *zillah* judge; " and I have experienced the advantage of carrying them into effect when no sufficient " reason could be alleged to the contrary, and the party who would become the re- " spondent was able and willing to give security in case of reversed judgment. No im- " mediate profit resulting from an appeal under such circumstances, it has very frequently " been relinquished altogether. My predecessors had adopted the general mode of staying " execution immediately on appeal, which proved an encouragement to that proceeding, " as appears from consulting the records of this court, which show that the proportion of " appeals to decisions were formerly much greater than at present. I cannot learn that the " measure I have adopted has been productive of any injury, nor has one person out of " forty, now imprisoned under decrees of the commissioners, preferred an appeal. I would " therefore recommend the exercise of a sound discretion in this particular "

4. I beg the favour of you to forward a copy of this letter, for further instructions from the Sudder Court.

Letter from the Benares Court of Appeal, dated the 6th Oct. 1817, enclosing the above.

We subjoin a copy of a letter from Mr. Bird, judge of Benares, dated the 8th ultimo, upon the subject of your letter of the 9th of April last,* regarding security in cases of money and other moveable property.

2. We see no reason to doubt the accuracy of the superior court's decision of the 9th of April; and the passage cited from Mr. Fortescue's letter appears to us to show nothing, but that Mr. Fortescue, who gave that opinion when he was a *zillah* judge, labored under the same mistake as Mr. Bird himself.

To the Benares Provincial Court, dated the 29th Dec. 1817, in reply to the above.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 6th October last, with its enclosure from the judge of the city of Benares.

* See No. 272, page 97.

2. In my letter of the 9th April last, you were advised of the opinion of the Court, that the provisions contained in Section 12, Regulation XIII. 1808, must be considered in full force, notwithstanding the expression "empowered." in the 5th clause of Section 46, Regulation XXIII. 1814.

3. I am now directed to transmit for your information, and for the information of the city judge, the enclosed copy of a letter from the late judge of Allahabad, under date the 26th June, 1812, and copy of the letter written in reply on the 10th July following,* containing the determination of the Sudder Dewanny Adawlut, that execution of judgment for money or other moveable property must be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed upon the appeal.

4. At the period of this correspondence, the section cited by Mr. Bird, viz. Section 24, Regulation XL. 1793, (the terms of which correspond nearly *verbatim* with the 5th clause of Section 46, Regulation XXIII. 1814,) was in force, but has been since rescinded by Section 2 of the last mentioned regulation.

5. The Court further direct me to observe, that the terms of the 4th and 6th clauses of Section 45, Regulation XXIII. 1814, appear to imply, that if an appeal from a *moonsiff's* decree be admitted, and the prescribed security for staying execution in cases of appeal be given, the enforcement of the decree should be suspended during the trial of the appeal.

December 29, 1817.

From the Register of Zillah Bundelcund, dated the 31st December, 1817.

By Section 14, Regulation XVII. 1817, in cases of perjury, registers are directed to send the case to the judge for commitment. It appears to me to be an anomaly, that I, as register with full powers stationed at a distance from the *sudder* station, must send a case for commitment to the judge at Bandah, whence it must be returned to me to be put on my calendar as joint magistrate; and that as joint magistrate I should have authority to commit in all cases.

2. By clause 2, Section 16, Regulation XIX. 1817, the judge is authorized to take security from defendants in summary suits, but registers with full powers, deputed to a distance from the *sudder* station, do not appear to have that power granted them. To apply to the judge for his sanction to their being admitted to bail, would be useless, for summary causes are generally soon decided.

3. I request you will do me the honor to obtain the opinion of the Court on these points, and to inform me of the result.

4. I should have sent this letter through the judge of this *zillah*, if he had not been absent on duty with his Excellency the Governor General.

*To the Register of Zillah Bundelcund, at Culpee, in reply to the above, dated the
4th February, 1818.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 31st ultimo, and to communicate to you the following observation of the Court upon the points therein referred.

No. 285.

1817
Reg XVII
Sec 14, Cl 2,
and Reg XIX
Sec 16, Cl 2
1814
Reg XXIV
Sec. 12

2. Upon the question stated in the 1st paragraph of your letter, the Court remark, that the rule of procedure against persons who may be guilty of perjury in a civil suit before a register, is clearly laid down in the second clause of Section 14, Regulation XVII. 1817, viz. that the proceedings, on which the charge of perjury may be grounded, shall be referred to the judge for his consideration and orders; but that it is not necessary, as you suppose, that the case should be returned to the register to be put on his calendar as joint magistrate, it being expressly declared in the same clause, that if the judge be of opinion, that there are sufficient grounds for bringing the accused party to trial before the court of circuit, he shall record his opinion to that effect; after which the whole of the papers relative to the case are to be transferred to the *cutterree* of the magistrate, that the order of the judge may be carried into effect, and the case brought before the court of circuit in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate.*

3. With regard to the next point referred to in your letter, viz. whether a register vested with special powers under Section 12, Regulation XXIV. 1814, is competent, under the provisions of Section 16, Regulation XIX. 1817, to admit alleged defaulters and their sureties to bail pending a summary inquiry for recovery of arrears of rent, I am directed to communicate to you the opinion of the Court, that, as a register vested with full powers by Section 12, Regulation XXIV. 1814, and stationed at a place not being the station of the *zillah* or city court, is declared competent by the 7th clause, with the sanction of Government, to exercise original jurisdiction in the cognizance and trial of summary suits, the spirit of the rule in the 2d clause of Section 16, Regulation XIX. 1817, for admitting defendants to bail in such suits, must be considered applicable to registers so empowered and stationed, although not expressly included in the terms of the clause in question.

February 4, 1818.

No. 286.

To the Benares Court of Appeal, dated the 4th February, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt, on the 14th ultimo, of a letter from you, dated the 25th November last, with the correspondence therein mentioned, submitted at the request of Mr. F. C. Smith, acting register of *zillah* Bundlecund stationed at Culpee.

1796
Reg. X. Sec. 3

2. On consideration of these papers, the Sudder Dewanny Adawlut are of opinion, that the prohibitory and general order issued by your court to the acting register on the 29th July, 1817, and confirmed on the 8th September following, directing him "not to call upon the *canoongoes* to attend *punchais*, or act as arbitrators," exceeded your competency under the regulations in force.

1803.
Reg. XXI.
1813
Reg. VI.

3. The Court have therefore, annulled the order referred to, and directed me to communicate the following instructions for the future guidance of Mr. Smith in regard to the employment of *canoongoes* as arbitrators.

* See a different construction in the second paragraph of No. 87, p. 20.

4. These officers not being declared by any regulations to be exempted from acting as arbitrators, and it being optional with them to accept or decline the office, as they may think proper, when elected by parties, the Sudder Dewanny Adawlut are of opinion, that it is sufficient to provide for their free exercise of this option.

5. There being some reason to apprehend, from the representations made to the collector, that, in the instances brought to the notice of the Board of Commissioners by that officer, the *canoongoes* were taken from their proper duties by the *chupassas*, of the register's court, and compelled to act as arbitrators, although this may have been done without the sanction or knowledge of the register, it is requisite that measures should be taken to prevent so objectionable a practice.

6. It may be left to the collector to notify to the several *canoongoes* under his authority, that they are at liberty to decline the office of arbitrator when proposed to them by individuals: but the Court direct, that the acting register be enjoined not to require their attendance on any future arbitration, without having ascertained that they are willing to undertake the duty.

7. The Court further desire, that in cases where the nomination of an arbitrator may rest with the civil court, the acting register will avoid, as far as practicable, the appointment of *canoongoes*; and, at all events, whenever the selection of them may be unavoidable, an immediate communication of the appointment should be made to the collector, to enable him to provide for the discharge of the duties on which the *canoongoe* may be engaged, and thereby obviate the inconveniences which are stated to have resulted from the employment of these officers without such communication.

8. You are desired to transmit a copy of this letter to the acting register at Culpee for his information and guidance.

February 4, 1818.

To the several Courts of Circuit, dated 4th February, 1818.

By the fifth clause of Section 8, Regulation XVII. 1817. it is declared, that in all cases of conviction before the courts of circuit, of any of the offences specified in the preceding clause, when attended with wounding or other corporal injury in a slight degree, the judge of circuit may adjudge such punishment as may appear adequate to the offence, not exceeding 39 stripes with a *corah*, and imprisonment for fourteen years in banishment.

2. The offence of "burglary" being included in the Section above cited, a doubt has been entertained, whether it was intended to supersede the rules before in force for the punishment of this offence, contained in Regulation I. 1811, and Regulation XI. 1814.

3. The Court think it necessary therefore to communicate to you their opinion, that the clause in question was not intended to alter any of the provisions relative to burglary, contained in the regulation above mentioned.

4. The first clause of Section 8, Regulation XVII. 1817, rescinds the second clause of Section 5, Regulation LIII. 1803, which contained provisions relative to murder, wounding, and other personal injuries, committed in the prosecution of theft or burglary, and the remaining clauses of the same section are substituted for the clause so rescinded.

No. 287.

1803	Reg. LIII.
Sec. 5, Cl. 2.	1811.
	Reg. I.
	1814.
	Reg. XI
	1817.
	Reg. XVII.
	Sec. 8, Cl. 5.

5. The second, third, and fourth clauses of the section abovementioned refer to cases punishable with death, or with 39 lashes of the *corah*, and imprisonment and transportation for life. The fifth clause refers to cases in which a robbery, burglary, or theft, or an attempt to commit the same, may have been attended with wounding, or other corporal injury not endangering life; and, in such cases, authorizes the courts of circuit "to adjudge such punishment as may appear adequate to the offence, not exceeding the sentence which the courts of circuit are authorized to pass in cases of burglary by the first clause of Section 3, Regulation I. 1811, viz. 39 stripes with the *corah*, and imprisonment for 14 years, in banishment from the district where the prisoner may have resided."

6. But nothing in the abovementioned clause expresses, or refers to any alteration of the rules before in force relative to burglary, when not attended with wounding or other corporal injury. On the contrary, in the following clause (the sixth) it is provided, that nothing in the preceding clause shall be construed "to authorize an enhancement of the penalties declared by the regulations in force for burglary or theft, when not accompanied with wounding or other corporal injury," and there would be an obvious inconsistency in supposing it to be intended that the courts of circuit should exercise a discretion in mitigating the penalties for burglary, attended with wounding or other corporal injury, beyond what they are authorized to exercise under the provisions of Section 2, Regulation XI. 1814, in cases of burglary and other inferior offences, not attended with wounding or other corporal injury.

7. The Court accordingly direct, that the rules contained in Regulation I. 1811, and Regulation XI. 1814, for the punishment of burglary, be still considered in full force, and applicable to all cases of conviction of burglary that may come within the fifth clause of Section 8, Regulation XVI. 1817.

February 4, 1818.

No. 288.

1793

Reg. XXXVI.
See 15

To the Register of Zillah Backergunge at Beerhoom, dated the 25th February, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and to acquaint you in reply, that the Court are not aware of any objection to your nomination of Mr. Gardner, the assistant surgeon at Backergunge, to officiate for you in the registry of deeds, under Section 15, Regulation XXXVI. 1793, until the appointment of an acting register at that district.*

February 25, 1818.

No. 289.

1814

Reg. I. Sec. 15,
Reg. XXVI
Secs. 2, 22 and 24

To the Provincial, Zillah, and City Courts, dated the 16th March, 1818.

A doubt having been entertained, whether copies of decrees and other documents filed with petitions for a special appeal, under Section 2, Regulation XXVI. 1814, should be considered liable to the rule contained in Section 15, Regulation I. 1814, as modified by Section 22, Regulation XXVI. 1814, I am directed to communicate to you the opinion of the Sudder Dewanny Adawlut, that all copies of decrees and other documents filed with

* See the rules on this subject contained in Regulation IV. 1821.

petitions of appeal in regular suits, (whether the appeal be special, or not,) must be considered within the rule above cited ; with an exception to *vakulutnamahs*, and other documents exempted from the stamp duty on exhibits by Section 24, Regulation XXVI. 1814.

3. The Court at the same time are of opinion, that Section 15, Regulation I. 1814, and its modification in Section 22, Regulation XXVI. 1814, are not applicable to copies of decrees, or other documents, which may not be filed for record.

March 16, 1818.

To the Benares Court of Circuit, dated the 2d April, 1818.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of the following letters, with their respective enclosures, relative to the case of Bustee Lal, charged with forgery.

1st. A letter from your senior judge and your officiating judge, Mr. C. Smith, dated the 8th December, 1817.

2d. A letter from Mr. Cracroft, magistrate of *zillah* Juanpore, dated the 25th August, 1817, addressed to the register of the Nizamut Adawlut, and transmitted through your court.

3d. A letter from your officiating judge, Mr. J. B. Elliott, dated the 23d January, 1818.

4th. Another letter from ditto, dated the 5th February, 1818.

2. From the proceedings received with the above letters, which are returned herewith, it appears, that on the 29th June 1816, Bustee Lal, on a charge of forgery preferred by Jankee Zurgur, was held to bail by Mr. Cracroft, the magistrate of *zillah* Juanpore, to take his trial before the court of circuit at the next session of jail delivery for that *zillah*, viz. the second session of 1816, which was commenced before your officiating judge, Mr. Elliott, on the 22d December 1816, and concluded on the 21st January 1817. On the 20th January 1817, Mr. Elliott having read the magistrate's proceedings, and finding that neither Bustee Lal, nor his surety, Bahadoor Jhan, has attended the session, although the landed property of the surety has been attached through the collector by order of the magistrate, with a view to make good the sum of 500 Rupees, to which amount the surety was bound for the appearance of Bustee Lal; also, that further measures had been taken by the magistrate of Juanpore, through the magistrate of the city of Benares, to cause the attendance of Bustee Lal, he (the officiating judge) called upon the magistrate of Juanpore to report the result of such measures ; and on the following day, viz. the 21st January 1817, being advised by the magistrate, that neither Bustee Lal nor his surety, Bahadoor Jhan, had appeared, he passed an order for postponing the trial of Bustee Lal in the following terms : "It appearing from the proceedings of the magistrate of Juanpore, dated the 21st January 1817, that notwithstanding the attachment of Mouzah Dhunior, the property of Bahadoor Jhan, neither the defendant nor his surety, Bahadoor Jhan, is in attendance, and it having been requisite that the defendant should attend, and deliver his answer in this court on the trial of the case ; and as the present session is concluded, and the charge against the defendant cannot be tried without his

No. 290.
1814
Reg XXV
Secs 11 and 12.

"attendance; ordered therefore, that a copy of this proceeding be sent to this magistrate of
 "zillah Juanpore, with instructions to cause the attendance of the defendant before this
 "court at the next session; the trial being postponed at the present session."

3. It further appears, that on the 18th of December 1816, nearly six months after Bustee Lal had been held to bail by the magistrate of Juanpore for trial before the court of circuit, he presented a petition, through his *vakeel* Rampeisaud, to your officiating judge, Mr. C. Smith, at Benares, in which petition, after detailing the transaction on which the charge against Bustee Lal was founded, and stating different pleas against the truth of the charge, it was requested that the magistrate's proceedings might be called for, and the authority of the court of circuit at the *sudder* station interposed, on the declared ground, that the judge of circuit appointed to hold the *zillah* jail delivery was about to arrive, and the petitioner (Bustee Lal) entertained great apprehension that the judge of circuit might, without understanding the circumstances of the case, pass an order corresponding with that of the magistrate.

4. Mr. Smith, on receipt of this petition, instead of directing Bustee Lal to attend his trial before the judge of circuit holding the jail delivery at Juanpore, (which was evidently incumbent upon him,) appears from his proceedings of the 21st December 1816, to have required the magistrate at Juanpore to transmit his proceedings in this and another case, and to suspend execution of the orders passed by him (the magistrate) till the receipt of further instructions.

5. The magistrate, having, previously to the receipt of the requisition, made over the papers on the charge of Jankee Zurgur against Bustee Lal to the judge of circuit who was holding the jail delivery at Juanpore, communicated the same to the court of circuit at Benares, in a *roobakaree* dated the 30th of December 1816; which also noticed that Bustee Lal had absconded, and the amount of his bail had consequently been demanded from his surety.

6. On the 21st March 1817, your officiating judge, Mr. C. Smith, in consequence of a second petition from Bustee Lal presented by his *vakeel* Rampersaud on the 14th of that month, called again upon the magistrate of Juanpore for his proceedings on the charge of Jankee Zurgur, with directions to suspend the execution of the order of commitment against Bustee Lal till the receipt of further instructions; and on the 24th and 28th July last, Mr. Smith and your senior judge, (as stated in their respective proceedings on those dates,) not considering the magistrate's inquiry to establish sufficient grounds for bringing Bustee Lal to trial before the court of circuit on the charge of forgery preferred against him by Jankee Zurgur, annulled the magistrate's orders of commitment, with directions for a final discharge of Bustee Lal in this case, and for a return of the penalty of 500 Rupees levied from his surety, Bahadoor Jhan.

7. On a review of the above facts and circumstances, the Court of Nizamut Adawlut are of opinion, that your officiating judge, Mr. Smith, and your senior judge, who concurred with him, were not competent under the regulations in force, to annul the magistrate's order of commitment, and direct the discharge of Bustee Lal, after the magistrate's proceedings had come before your officiating judge, Mr. Elliott, in the regular course of holding the jail delivery of *zillah* Juanpore, for the second session of 1816, and Mr. Elliott

had postponed the trial, in consequence of the non-appearance of Bustee Lal, with instructions to the magistrate to cause his attendance at the ensuing session.

8. It being expressly declared in Section 11, Regulation XXV. 1814, that the judges holding the *zillah* and city jail deliveries "in the trial of prisoners committed or held to bail by the magistrate to be tried before the court of circuit, as prescribed by the regulations, possess in conjunction with their law officers, the full powers which are vested in the courts of circuit for the trial and punishment of criminal offences," the Court are of opinion, that the order passed by the officiating judge of circuit, on the 21st January 1817, was not open to revision by the other judges of your court at the *sudder* station, and could not be set aside, [as it virtually was, by the orders of Mr. Smith and your senior judge, passed on the 24th and 28th July 1817,] without the sanction of the Nizamut Adawlut, in pursuance of Section 24, Regulation IX. 1807.

9. At the same time the Court are of opinion, that the charge of forgery, preferred by Jankee Zurgur against Bustee Lal, was very imperfectly investigated by the magistrate of Juanpore, and that his proceedings do not contain sufficient grounds for bringing Bustee Lal to trial on this charge before the court of circuit.

10. Under this view of the case, the Court of Nizamut Adawlut have judged it proper to pass the following resolutions.

1stly. That the orders contained in the proceedings of your officiating judge, Mr. Smith, under date the 24th July 1817, and of your senior judge, under date the 28th of the same month, as far as they respect the charge of Jankee Zurgur against Bustee Lal, and the discharge of the defendant, be annulled as irregular.

2dly. That the order of commitment in the above case, passed by the magistrate of *zillah* Juanpore under date the 29th of June 1816, be likewise annulled; as not founded upon sufficient grounds to warrant the defendants being brought to trial before the court of circuit, under the general rule prescribed in Section 5, Regulation IX. 1793, extended to the province of Benares by Section 4, Regulation XVI. 1793.

3dly. That the above resolutions be communicated by the magistrate of Juanpore to Jankee Zurgur and Bustee Lal, and, in the event of the former being desirous to prosecute his charge against the latter, that the magistrate enter into a full inquiry, with a view to ascertain whether the alleged forgery was really committed; and if so whether there be sufficient evidence against Bustee Lal, to warrant the presumption that it was committed, or procured, by him. After completing this inquiry, (which should include an examination of the evidence offered by the defendant in refutation of the charge,) the magistrate will determine whether there be sufficient grounds for bringing the defendant to trial before the court of circuit, or otherwise, under the general rule above adverted to.

11. With regard to the enforcement of the penalty demandable from the surety Bahadoor Khan, in consequence of the non-attendance of Bustee Lal at the time appointed for his trial before the court of circuit at Juanpore, the Court are of opinion, that a forfeiture of the penalty was incurred by the non-appearance of Bustee Lal at the time appointed for his trial; and by a failure on the part of his surety to produce him, or assign satisfactory reason for his non-attendance. The magistrate, however, should in the first

instance have reported such failure to the officiating judge of circuit, and have obtained his authority for demanding the penalty previous to the enforcement of it.

12. Under all the circumstances of the case, the Court do not now think it necessary that the amount of the penalty which has been returned to the surety Bahadoor Khan, should be again demanded from him, provided he shall cause the appearance of Bustee Lal before the magistrate on the further inquiry above directed.

13. You are desired to transmit a copy of this letter to the magistrate of *zillah* Juanpore, for his information and guidance.

14. The Court adverting to the proceeding of your officiating judge, Mr. Smith, under date the 21st December, 1816, as noticed in the 4th paragraph of this letter, must caution him against any similar interposition in the regular course of commitment and trial prescribed by the regulations. Bustee Lal, the defendant in this case, having allowed several months to elapse after the magistrate's order had been passed for his being brought to trial before the court of circuit, without making any application to the court of circuit at the *sudder* station, and having at length applied to be relieved from the magistrate's order at the time when his trial was about to come before the court of jail delivery at Juanpore, there could be no valid reason for Mr. Smith's interposing his authority to prevent the regular course of trial, and the reasons stated in the petition of Bustee Lal were in the judgment of the Nizamut Adawlut altogether insufficient and inadmissible.

April 2, 1818.

No. 291.

To the Acting Chief Secretary to Government, dated the 6th May, 1818.

1799
Reg. VII. Sec. 29,
Clause 3
1801
Reg. I. Sec. 10.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 28th ultimo, and its enclosure, relative to several estates attached by the acting judge of *zillah* Cuttack, as having been purchased under a fictitious or substituted name, in opposition to the third clause of Section 29, Regulation VII. 1799, and desiring the sentiments of the Court on the regularity of such attachment; as well as upon the course of proceeding which should be generally adopted under the clause above mentioned, whenever a breach of the provisions contained in it may be brought under the notice of the local officers, either in the judicial or revenue department.

2. On the general question above stated, the Court beg leave to cite the following extract from Section 10, Regulation I. 1801—"All purchasers of lands at the public sales, are required to attend the collector of the district wherein the lands may be situated, either in person or by their representatives duly authorized, and to execute the usual *caboolat* and *listbundy* for the public revenue, assessed upon the lands purchased by them. In cases of doubt as to the real purchaser, or of suspicion that the purchase has been made in opposition to the rules contained in clauses third and fourth of Section 29, Regulation VII. 1799, the collector is authorized to cause the personal attendance of the alleged purchaser at his *cutcherreee*, if resident within his jurisdiction; or, if the purchaser be resident in any other *zillah*, the collector of such *zillah* is authorized and required to cause the attendance of the purchaser at his *cutcherreee*, on the application of the collector in whose district the lands may lie, and to make any examination or

"inquiry that may be desired by the latter collector, or by the Board of Revenue ; to whom a full report is to be made in such cases for the orders of the Governor General in Council, as directed in clause fourth of Section 29, Regulation VII. 1799."

3. Under the rule prescribed in the section above cited, the Court are of opinion, that the attachment made by the acting judge of *zillah* Cuttack of the estates referred to in his letter of the 2d ultimo, was irregular ; and that he should be instructed to withdraw such attachment, and to communicate all information and evidence obtained by him relative to the illegal purchase of the estates in question to the collector of the district, for the purpose of enabling the latter to make the inquiry and report prescribed in Section 10, Regulation I. 1801.

4. The Court direct me to add, that a similar mode of proceeding should in their judgment be adopted, whenever a breach of the provisions contained in the third or fourth clause of Section 29, Regulation VII. 1799, may be brought under the notice of the local officers of Government.

May 6, 1818.

To the Judge of Zillah Allahabad, dated the 9th July, 1818.

No. 292.

¹⁸¹⁴
Reg. I, Sec 9.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 24th ultimo, and in reply to communicate to you the opinion of the Court, that the construction given by Mr. Smith to Section 9, Regulation I. 1814, does not appear to be warranted by the terms of that section, which directs only that documents, which may not have been written on paper bearing the prescribed stamp, shall not be admitted in evidence, or otherwise received or filed in any court of judicature.

If the plaintiff can prove his claim by other satisfactory evidence, the courts of justice are not precluded from receiving such evidence by any part of the regulation above-mentioned.

July 9, 1818.

From the Judge of the Southern Division of Seharunpore, dated 18th June, 1818.

No. 293.

^{1814.}
Reg. XXVI.
Sec. 15.

I request you will have the goodness to obtain and communicate to me the opinion of the Judges of the Sudder Dewanny Adawlut whether the provisions of Section 15, Regulation XXVI. of 1814, preclude the *zillah* courts from executing a decree on the property of persons against whom it is given, (not at the request of the persons on whose favor it was passed,) but in satisfaction of a former decree given in favor of a third person against those in whose favor the second decree was passed, who has not been able to recover the amount from any property belonging to these persons, and who, it is stated, are about to adjust their claim with those against whom the petitioner solicits the decree may be enforced, in order that the amount may not be attached, should the decree be executed by application to the court.

*To the Judge of the Southern Division of Zillah Seharunpore, in reply to the above,
dated 9th July, 1818.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th ultimo.

2. In reply I am directed to communicate to you the opinion of the Court, that the provisions of Section 15, Regulation XXVI. 1814, were not meant to preclude the execution of decrees on the application of any party interested in the execution of them, and applying in the form prescribed by the fifth clause of that section.

3. In the case stated, supposing the holder of the former decree to have made the prescribed application, and that no other property is forthcoming from which the decree passed in his favour can be satisfied, the Court are of opinion, that he would have an equitable claim to attach the property receivable by his debtor, under the judgment in favour of the latter, and to cause execution accordingly, unless good and sufficient reason against the enforcement be shewn by the party against whom such judgment may have been passed.

July 9, 1818.

No. 294.

1795
Reg LXI
Secs. 2, 3, 4, and 5.

To the Judge of Zillah Burdwan, dated the 20th August, 1818.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from the late judge of zillah Burdwan, (Mr. Bayley,) dated so long since as the 12th September 1811, and containing a reference respecting the allowance of batta in the adjustment of summary suits between landholders and their tenants, which by an oversight, does not appear to have been answered.

2. The Court find nothing in Regulation LXI. 1795, which can be construed to warrant a landholder in charging batta upon Sicca Rupees of the 19th sun, when paid to him by his under-tenants; whether such Rupees may be deficient in weight, more or less than six annas per cent.

3. It is declared in Section 2 of that regulation, that "all Sicca Rupees of the "nineteenth sun, which shall not have lost by wear a greater proportion of their full "standard weight than six annas per cent. or six-sixteenths of a Rupee in one hundred "Rupees, shall be considered as of standard weight, and be received as such in all public "and private transactions."

4. In Section 3 of the same regulation it is explained, that the above rule "is to be "considered applicable to those nineteenth sun Rupees only, in which the loss of weight has "been occasioned by wear;" and in Section 4, it is added, that "Rupees of the nineteenth "sun, deficient in weight from any other cause excepting wear, or deficient in weight from "wear in a greater amount than six annas per cent. are to be received agreeably to the "following rule. For one hundred Sicca weight of such light nineteenth sun Sicca Rupees, "the payer is to receive credit for one hundred nineteenth sun Sicca Rupees."

5. It appears to the Court, that the above rule should be observed in all payments of rent, made by under-tenants of land to the *zemindars* and other landholders, as well as in the payment of the latter to the public treasuries; and the orders of Government, under date the 20th June 1810, (a copy of which was transmitted by the collector of Burdwan to

the judge, with his letter of the 19th August 1811,) as understood by the Court, are perfectly consistent with the rules above-mentioned.

6. These orders, which direct the officers of the revenue department to observe the rule suggested in the 6th paragraph of a letter from the Accountant General, dated the 16th June 1810, provide only against an abuse, which had arisen from mixing Rupees more deficient in weight than those described in Section 2, Regulation LXI. 1795, with Rupees which had not lost by wear so large a proportion of their standard weight as six annas per cent. ; and causing them to be weighed together at the public treasuries, in the manner prescribed by Section 5 of the Regulation above-mentioned.

7. To guard against this abuse, it was proposed by the Accountant General, and ordered by Government, "that it be the duty of the proper officers to examine the Rupees "separately, and to reject all those which are more deficient in weight, than in the proportion of six annas per cent. and that the remainder be then weighed by fifties, according "to the present rule," viz. that contained in Section 5, Regulation LXI. 1795.

8. By the term "reject," in the above extract from the Accountant General's letter, the Court understand it to be intended, that Rupees deficient in weight in a greater proportion than six annas per cent. are not to be admitted as of standard weight, under Section 2, Regulation LXI. 1795, but are to be received according to the rule prescribed for the receipt of light Rupees, in Section 4 of that Regulation ; while, at the same time, all Rupees of the nineteenth sun, which, by a separate examination, may not appear to have lost by wear a greater proportion of their standard weight than six annas per cent. are to be considered as of standard weight, and received as such in all public and private transactions, without any deduction of batta, or otherwise, in conformity with Section 2, of the Regulation above cited.

9. In communicating to you the above construction of the Regulations in force, relative to the receipt of 19 sun Sicca Rupees, I am directed to add, that in the judgment of the Sudder Dewanny Adawlut, this construction should guide your future decisions, in summary, as well as regular suits; and that no vague indefinite claim of batta should be admitted.

August 20, 1818.

Extract from a letter to the Secretary to Government in the Judicial Department, dated the 27th August 1818, submitting the Report on the monthly jail deliveries of the Suburbs of Calcutta and the 24-Pergunnahs, for June 1818.

Par. 3. The court of circuit have been informed, in answer to the remarks of the second judge, that the Court of Nizamut Adawlut do not consider the fourth clause of Section 3, Regulation VI. 1818, as meant to restrict a single judge of the court of circuit holding a zillah or city jail delivery from exercising, in concert with his law officer, the same discretion as heretofore, in allowing persons held to bail for trial before the court of circuit, to attend and plead upon the trial by a vahel duly constituted ; when strong and sufficient

No. 295.	1818
	Reg. VI Sec 3
	1807
	Reg IX Sec. 6.
	1814
	Reg XXV. Sec. 12.

reasons may be stated for dispensing with the personal attendance of the party, and his attendance in person may not be required by the provisions of the Mahomedan law.

4. The court of circuit have also been informed, in answer to the 8th paragraph of Mr. Rees's letter, that the Court do not understand it to be intended by the clause above-mentioned, or by Section 6, Regulation IX. 1807, that the *vakeel* therein referred to must necessarily be one of the established pleaders of the civil court.

5. In answer to the question stated in the 9th paragraph of Mr. Rees's letter, the court of circuit have been further advised, that, in the judgment of the Nizamut Adawlut, a single judge of the court of circuit at the *sudder* station, when holding the sitting of the criminal court under the provisions of Section 12, Regulation XXV. 1814, is competent to reject applications made to the court of circuit in pursuance of the fourth clause of Section 3, Regulation VI. 1818.

August 27, 1818.

No. 296.

Reg VI Sec. 7,
Cl 1.
¹⁸⁰¹

From the Acting Judge of Zillah 24-Pergunnahs, dated the 18th September, 1818.

By Section 7, clause 1, Regulation VI. 1801, *zameendars* on whose estates *killaries* shall be proved to exist, are liable to a fine to Government of 5,000 Rupees; the same to be recovered by the sale of the *village* in which such *killaries* may have been established.

2. I request you will do me the favor to submit for the opinion and orders of the Sudder Dewanny Adawlut, whether, under the provisions above quoted, a separate penalty is recoverable for the *killaries* in each *village*, or whether one action only will lay against the proprietor of the estate, whatever may be the number of salt works existing on it.

To the Judge of 24-Pergunnahs in reply to the above, dated the 24th September, 1818.

In reply to your letter of the 18th instant, I am directed to state, that under the terms of the first clause of Section 7, Regulation VI. 1801, the Court are of opinion, that one fine only, of 5,000 Rupees, can be sued for, whatever may be the number of *killaries* within the same estate.

September 24, 1818.

No. 297.

Reg XXVI.
Sec. 3, Cl 11.
^{1814.}
Reg XXVII.
Sec 32.
^{1817.}
Reg. XIX. Sec. 9

To the Benares Court of Appeal, dated the 11th December, 1818.

I am directed to acknowledge the receipt of your letter, under date the 15th September last, submitting a question, at the request of Mr. Bird, the joint register stationed at Ghazeeppore, relative to the fees of *vakeels* in certain summary suits.

2. The Court observe, that the summary suit termed the *Kurmaha* case, which appears to have given rise to the reference, was a suit arising out of forcible dispossession from rent-free land.

3. The provisions of clause 11, Section 3, Regulation XXVI. 1814, which leave a discretion to reduce the *vakeels*' fees below a fourth of what would have been payable if the case were a regular one, and to fix them at such sum as shall be deemed a reasonable compensation, relate specifically to summary appeals against non-suits or dismissals on default.

4. By the provisions of Section 32, Regulation XXVII. 1814, pleaders employed in summary suits or appeals for arrears of rent, for recovering possession of land, and generally in all suits and appeals in which a summary process is authorized by the Regulations, were entitled specifically to one-fourth of the fee which they would have received, had such suits been instituted as regular and not as summary ones. To the provisions of this section, under which the *Kurmaha* case, (or case of dispossession from land,) would have come, the rules contained in Section 3, Regulation XXVI. 1814, had not been considered applicable, and therefore while the rules in question were in force, there was no discretion in such a case to reduce the fees below one-fourth of what they would have been in a regular suit. As the Regulations then stood, it is obvious, that the degree of trouble imposed on *vakeels* in many of the summary suits or appeals to which Section 32, Regulation XXVII. 1814, had reference, must have been very inadequate to the specific rate of compensation to which that rule entitled them. The above Section, therefore, (32, of Regulation XXVII. 1814,) with the one which follows it, were rescinded by Section 9, Regulation XIX. 1817, which makes the rule contained in clause 11, Section 2, Regulation XXVI. 1817, (wherein a discretion was given to reduce the fee.) applicable to all summary suits and appeals; and applicable therefore to the *Kurmaha* case, in which consequently the court of appeal might reduce the fees to such sum as it might deem reasonable; the maximum being one-fourth of what would have been payable had the suit been a regular one of the lands; and calculable on so many times the annual produce, in conformity to Section 25, Regulation XXVII. 1814.*

December 11, 1818.

To the Fourth Judge of Calcutta Court of Circuit, dated the 26th December, 1818.

I am directed to acknowledge the receipt of your letter, dated the 18th instant, on the subject of the provisions of the new Regulation XII. of 1818.

2. With respect to cases of burglary, provided for by that Regulation, and placed thereafter within the cognizance of the magistrate, if the offences have taken place and the commitments for trial been made, before the promulgation of the Regulation, and laid before the court of circuit subsequently to that period, the Nizamut Adawlut are of opinion, that as the court of circuit has discretion to mitigate punishment for burglary, under the third clause of Section 2 of the Regulation in question, to such degree as it may deem proper without restriction, that court should try the commitments to which you allude, adhering to the spirit of the new rules in apportioning the punishment in cases of conviction, so as to give the offenders the benefit of the mitigated penalties.

December 26, 1818.

No. 298.
1818.
Reg XII Sec. 2.

* See No. 300, page 120.

No. 299.

1818
Reg. XII Sec. 2,
Cl. 4 and 5
1811.
Reg. I Sec. 2,
Cl. 1, 2, and 3.
1814
Reg. XI Sec. 2,
Cl. 2, 3, 4, and 5.

To the Magistrate of Zillah Hoogly, dated the 26th December, 1818.

I am directed to acknowledge the receipt of your letter, dated the 21st instant, regarding the construction of certain provisions contained in Regulation XII. 1818.

2. In the burglaries within the cognizance of the magistrate, under the fourth and fifth clauses of Section 2, Regulation XII. 1818, the time of committing the offence, that is, whether it have been done during the day or the night, is not specified as material. But the punishment within the magistrate's competence being discretionary while within the maximum of 2 years imprisonment and 30 ratans, it must also be within the magistrate's discretion to take into his consideration the time when the act was committed, as one among the circumstances of the case, which are to guide his judgment in apportioning the degree of punishment suited to the offence.

3. Under the discretion vested in the courts of circuit by the third clause of Section 2, Regulation XII. 1818, the Nizamut Adawlut are of opinion, that those courts may mitigate punishment in the offences therein alluded to below three years imprisonment, and to such degree as they may judge proper.

4. The provisions contained in clauses 1, 2, and 3, of Section 2, Regulation I. 1811, and in clauses 2, 3, 4, and 5, of Section 2, Regulation XI. 1814, appear to the court to be virtually superseded by the provisions of Regulation XII. 1818.

December 26, 1818.

No. 300.

1814.
Reg. XXVII.
Sec. 32
Reg. XXVI.
Sec. 3.

To the Acting Judge of Zillah Dacca Jelalpore, dated the 29th January, 1817.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 14th instant, requesting instructions regarding the amount of fee to which pleaders are entitled in summary suits and appeals, which may be withdrawn; or dismissed on default; or adjusted by *razeenamah*.

2. The Court are of opinion, that under the general terms of Section 32, Regulation XXVII. 1814, the rule contained in the section, viz. that the *rakeels* employed in summary suits be "allowed for pleading such suits, a fee equal to one-fourth of the fee which they "would have received, had such suits been instituted as regular suits," must be understood to comprehend summary suits and appeals withdrawn or adjusted by *razeenamahs*, or dismissed on default, as well as those decided on investigations; and that, consequently, the rate of fee in all such cases must be a fourth of what it would have been, if the suits had been regular, instead of summary; viz. a fourth of the several proportions payable in regular suits under Section 31, Regulation XXVII. 1814; except in the summary appeals specially provided for by Section 3, Regulation XXVI. 1814, the eleventh clause of which authorizes the courts to award such fee as may be considered a sufficient compensation, not exceeding one-fourth of the fee to which the pleader would have been entitled in a regular suit or appeal.*

January 29, 1817.

* See No. 297, page 118. This Construction is erroneously placed, it should have followed No. 264, page 92.

From the Third Judge of the Dacca Court of Circuit, dated the 16th January, 1819.

The Circular Orders of the Nizamut Adawlut, under date the 4th February, 1818,* explain the provisions of clause 5, Section 8, Regulation XVII. 1817; and are equally applicable to clause 3, Section 2, Regulation XII. 1818: but the mitigation in cases of conviction for petty burglaries before the magistrate, provided for by clauses 4 and 5 of the latter section, and the enhanced penalties to which persons might in certain cases be liable on conviction for such offences before the court of circuit, suggest to me the propriety of submitting the following query for the consideration and orders of the superior Court.

Query. In cases of persons committed for trial by a magistrate to the court of circuit, under clause 2, Section 2, Regulation XII. 1818, if it should not be established in the course of the trial that the burglary had been attended with any of the aggravating circumstances specified in that clause, would the judge of circuit be warranted in referring back the case for the magistrate to proceed according to the fourth and fifth clauses of the Section, or should he himself pass sentence according to the rules contained in Regulation I. 1811, and Regulation XI. 1814, referring, if deemed necessary, the trial to the Nizamut Adawlut for mitigation, conformably to the provisions of clause 5, Section 2 of the latter Regulation?

To the Dacca Court of Circuit, in reply to the above, dated the 29th January, 1819.

The Nizamut Adawlut have had before them, a letter from your third judge Mr. Paton, dated the 16th instant, on a subject connected with the provisions of Regulation XII. 1818.

2. In the instance supposed in the second paragraph of Mr. Paton's letter, the Nizamut Adawlut do not think it would be proper to refer the case back to the magistrate who made the commitment, inasmuch as the judge of circuit who tries the case may, under the third clause of Section 2, Regulation XII. 1818, as construed by the Court,† mitigate the punishment at his discretion as low as he may think fit, whatever the circumstances of the burglary shall on conviction appear to have been; and may pass sentence under that regulation. In the event of commitments being made by a magistrate, by error or negligence, in cases which, under the regulation above quoted, he might have disposed of himself, it will be incumbent on the judge of circuit (where he sees sufficient ground) to report the magistrate's mode of proceeding to the Nizamut Adawlut for their orders; but still to try such commitments as have been made under the second clause of Section 2, of the regulation quoted.

January 29, 1819.

To the Acting Judge of Zillah Backergunge, dated the 28th May, 1819.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 17th instant, together with its enclosure; and in reply to acquaint you, that the Court do not consider the case of the petitioner referred by you† to come within the provisions of Section 11, Regulation II. 1806.

No. 301.

1818
Reg XII.
Sec 2, Cl 3

No. 302.

1806
Reg II Sec. 11.
1814
Reg XXIII.
Sec 45, Cl 7.

* See No. 287, page 109

† See No. 298, page 120

‡ The petitioner, confined for arrears of aheearee rents due to Government, applied to the zillah court, to be released under the provisions of Sec. 11, Reg. II. of 1806

2. In reply to the question contained in the fourth paragraph of your letter above acknowledged, I am further directed to communicate to you the opinion of the Court, that the rule contained in clause 7, Section 45, Regulation XXIII. 1814, cannot be held applicable to the cases of individuals in confinement, at the requisition of the collector; it being provided for by that clause, "that no person, from and after the 1st February 1815, shall be liable to personal confinement *in satisfaction of decree* for any sum not exceeding sixty-four rupees, beyond a period of six months."

May 28, 1819.

No. 303.

1818
Reg. XII
Secs 2, 3, and 4

From the Superintendent of Police, Western Provinces, dated the 28th June, 1819.

I beg leave to submit the following observations for the consideration and orders of the Nizamut Adawlut.

2. It is enacted by clause 2, Section 2, Regulation XII. 1818, that if the amount or value of property stolen in a burglary shall exceed the sum of one hundred rupees, the offender shall be committed for trial before the court of circuit, thus prohibiting the magistrate's punishing those who may be guilty of burglary to that extent. By Section 3 of the same regulation, the various degrees of theft are defined, with the penalties attached to each; and the magistrates are empowered to hear and determine, without reference to the courts of circuit, all cases unattended with aggravating circumstances, and also to exercise their discretion in committing for trial any prisoner charged with theft, who may, from bad character, prior conviction, or from any other peculiar circumstances, appear to them deserving of a severer punishment than they are authorized to inflict.

3. Now I beg leave to submit, that, in the first case, the magistrate is bound to commit the prisoner who has been guilty of burglariously stealing to the amount of one hundred rupees, or upwards; and in the second, he is to be guided by peculiar circumstances, and is allowed to exercise his discretion in punishing or committing. I conclude that value of property may be admitted as one of these circumstances; but as the law does not fix an amount, there may be, on that subject, as many opinions as there are courts: indeed, I am acquainted with one magistrate, who understands the above law to prohibit his committing a thief, whatever may be the amount stolen, under the idea, that had the value of property been a circumstance capable of aggravating the offence, the sum would have been fixed, as in the law regarding burglary.

4. As it is obvious that such a conclusion was never contemplated by the legislature, I would recommend the removal of all grounds for forming it, by fixing an amount beyond which the magistrate shall be declared incompetent to inflict punishment on a thief.

5. I also beg to take this opportunity of noticing to the Court, that Section 4 of the above quoted regulation contains rules for the punishment of receivers of property obtained in the perpetration of robbery by open violence or of theft, but makes no mention of burglary. This appears to me to be an important omission; for although there is no doubt of the intention of the law, it is necessary that such publications should not admit of the possibility of a doubt or misinterpretation.

*To the Superintendent of Police, Western Provinces, in reply to the above, dated the
9th July, 1819.*

The Nizamut Adawlut have had before them your letter of the 28th ultimo, submitting questions connected with the construction and provisions of Regulation XII. 1818.

2. As observed in your letter, the above quoted regulation limits the cognizance of the magistrate as a criminal judge, in cases of burglary, to those cases when the property taken is not more than 100 rupees; directing that where it exceeds that sum, the magistrate must commit; whereas, in cases of theft, the same limitation as to the amount is not made, the magistrate being left to his discretion, on the circumstances and features of the case.

3. The Nizamut Adawlut apprehend, that this was not an omission, but was the intention of the regulation; there being obviously a difference with regard to the degree of guilt, between theft in prosecution of burglary, and simple theft.

4. The Court do not think it necessary to specify particularly the punishment for knowingly receiving property acquired by burglary. It is evident that this comes under the general definition of property acquired by theft, which is provided for generally, and a discretion left as to the degree of punishment, according to the circumstances, provided it do not exceed certain specified limits.*

July 9, 1819.

To the Superintendent of Police for the Western Provinces, dated the 6th August, 1819.

No. 304.

The Nizamut Adawlut have had before them your letter, under date the 26th ultimo, with its enclosures.

¹⁸¹⁶
Reg XXII.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the provisions of Regulation XXII. 1816, no one individual can be assessed in the same town or city at a greater sum than one rupee for the *chowheedaree* assessment, whatever be his property in such town or city.

August 6, 1819.

To the Calcutta Court of Appeal, dated the 27th August, 1819.

No. 305.

I am directed to reply to a certificate, signed by your senior judge, and accompanied by a proceeding of the court of appeal held before him on the 23d ultimo; which submits a question, whether a cause having come by special appeal before a *zillah* judge, the appeal being from a decision by himself as register, the provincial court are competent to remove the proceedings and try the appeal, under the provisions of clause 3, Section 14, Regulation II. 1805; there being no particular mention made of special appeals.

¹⁸⁰⁵
Reg II. Sec 14,
Clause 3

2. The Court direct me to answer the question in the affirmative; the word *appeals* used in the clause quoted being general, and special appeals coming equally within the reason of the rule.

August 27, 1819.

* See Section 4, Regulation IV 1820, which provides, that in cases of theft when the amount stolen shall exceed 300 Rupees, the accused shall be committed for trial to the court of circuit and Section 4, Regulation VI. of 1824, which provides for the commitment of the receivers, when the amount stolen shall exceed 300 Rupees.

No. 306.

*To the Moorshedabad Court of Appeal, dated the 3d September, 1819.*1809.
Reg. VIII Sec. 3.

The Sudder Dewanny Adawlut have had before them your senior judge's letter, under date the 28th ultimo, on a general question regarding the removal of ministerial native officers of the provincial courts, and particularly adverting to the cases of Buncharam and Ramsoonder, *serishtadar* and *paishkar* of the Moorshedabad court.

2. The Sudder Dewanny Adawlut do not undertake to give you instructions how to act in these cases, which must be left to your discretion; but direct me to offer the following observations.

3. Under the provisions of Regulation VIII. 1809, Section 3, the power of removing their own ministerial native officers is vested in the provincial courts; by which is implied the power of removal on such grounds as the regulations declare sufficient for such a measure.

4. The fifth clause of Section 5 contains a general declaration with regard to all native officers, and must, in the opinion of the Court, be considered to include ministerial officers of the provincial courts, and that they shall be removable, without proof to any specific act of misconduct, whenever there shall be sufficient reason to deem them incapable, or in any respect unworthy of public confidence.

5. If Moonshee Ramsoonder cannot give a reasonable account of his possessing so much more property than the lawful emoluments of his office seem to authorize, the Court would deem the fact of his possessing that property a sufficient ground for presuming him a person unfit for public confidence.

6. With regard to the stated incapacity of the *serishtadar*, if this be the conclusion of the provincial court, from the present mode in which the duties of his office are performed, it is a ground recognized by the regulations as sufficient for removing him.

September 3, 1819.

No. 307.

1818
Reg. XII.
1814
Reg. XV.*To the Bareilly Court of Circuit, dated the 3d September, 1819.*

The Niżamut Adawlut have had before them your letter, under date the 17th ultimo, with its Persian enclosure.

2. The point therein submitted to the court, is, whether on two cases of conviction of theft before a magistrate, by one offender, he can, in each, award imprisonment to the extent allowed by Regulation XII. 1818, namely, two years, the whole making a sentence of four years; or whether, if he consider the offender to deserve, on a consideration of both cases, more than two years imprisonment, his jurisdiction is excluded, and a commitment must take place.

3. The Nizamut Adawlut consider the latter conclusion to be the right one, and that the magistrate, in punishing two or more offences committed by the same person, cannot go beyond the punishment within his discretion under Regulation XII. 1818.

4. The principle of Regulation XV. 1814, with regard to the power of courts of circuit in the punishment of two or more offences, appears equally applicable to the magistrates acting under Regulations XII. 1818. By neither can the ordinary limit of punishment be exceeded in convictions of two or more offences; and each, if they deem

the punishment within their competence insufficient, as applied to all the offences charged, must submit the case to the higher court.

5. The principle will apply, as well to two or more convictions before a magistrate on the same day, as to a subsequent conviction of another offence committed previously to the first conviction and sentence of an offender. If, in the case first tried, the magistrate shall have awarded punishment to the extent of his powers, he must commit the last case to the court of circuit, who will award such further punishment as may be fit, taking into consideration the first conviction and sentence.

6. The court of circuit, who have before them the two cases in question tried by Mr. Glyn, will of course act under the construction now given regarding the magistrate's powers. They will probably consider the proper mode of proceeding to be a commitment of the two cases for the next monthly sessions.*

September 3, 1819.

To the Judge of the City of Benares, dated the 19th November, 1819.

No. 308.

The Sudder Dewanny Adawlut have had before them your letter, under date the 25th September last, with its several enclosures, and direct me to communicate the following observations and orders.

2. In this case, [of Baboo Gobind Das *v.* Koosager,] the point submitted is, how far there is, or is not, a discretion in the civil courts, as to enlarging imprisoned persons under the rules contained in Section 11, Regulation II. 1806, regarding insolvent debtors confined in execution of decrees of the civil courts. The Court are of opinion, that under those rules a debtor is entitled to his release on making what the civil court, [subject to the controul of the court of appeal,] shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree. The provisions of clause 7, Section 45, Regulation XXIII. 1814, make no alteration in the above rules, except in fixing a maximum of time, during which a debtor shall be subjected to imprisonment in satisfaction of a decree for a sum not exceeding 64 rupees.

1806.
Reg. II Sec 11.
1814
Reg. XXIII
Sec 45, Cl. 7.

3. The Court desire to be considered as not giving an opinion whether the above construction would, or would not, include the case, (or one of similar features,) in which a native officer should be confined in execution for the refund of embezzlements made by him.

4. The point here [in the case of Mussamut Jurao and Soobdee] is, whether the provincial court (two judges sitting) were competent to order the city judge to interfere by summary process to prevent Munsa and others from molesting the petitioners in the possession of a *bagh* or garden, the city judge contending that they must be left for redress, if they required any, to a regular suit.

Summary interfe-
rence of the provincial
courts to prevent dis-
possession

5. It appears from the city judge's proceedings of the 9th June, that the petitioners were then in peaceable possession of the garden in question, and that the defendants acknowledged the fact, and engaged not to molest them again; that they complained

* The case contemplated in this construction has been provided for by Regulation VI. 1824.

afterwards of the defendants' again molesting them in the peaceable possession. Under such circumstances, the Court are of opinion, that the provincial court could properly direct Mr. Bird to interfere summarily to prevent the petitioners being ejected, though the order should have gone from the criminal department to Mr. Bird as magistrate.

6. The cases cited by Mr. Bird do not appear to be in point. In one, the Sudder Dewanny Adawlut held, that a claim for arrears of wages could only be tried in a regular suit, under the then existing law; in the other, that a *ryot*, ousted as a defaulter, rightly or wrongly, but without force, had no redress after he had been dispossessed, except in a regular suit. There the dispossession had taken place, and, as it turned out without a breach of the peace - in the case now in question, dispossession had not taken place, but was only apprehended, and a breach of the peace must be assumed as not improbable.

1807.
Reg I Sec 4,
Cl. 2

7. In this case, [of the execution of a decree,] the Court have not a copy of the decree; but they observe that it was a decree for a sum of money, passed in an original suit tried before the provincial court, and they conclude it to have been passed by Mr. C. Smith, and sent to the city court to be executed. When the plaintiff pointed out certain immovable property as belonging to the defendants and required its sale to satisfy the decree, a third party, a stranger, comes in and states part of the said property to be his, which, as far as then appeared, the city judge was inclined to believe, and ordered its sale to be stayed till he should inquire further into the matter, and the plaintiff should explain his own alleged title. The question is, whether, under such circumstances, Mr. C. Smith, having the subjects collaterally brought before him, and not by petition from one of the parties, could, sitting alone, set aside the city judge's order for staying the sale, and direct the sale of the property claimed by the third party to be proceeded in.

8. The Sudder Dewanny Adawlut are of opinion, 1. That the city judge, though not under any obligation so to do, might without impropriety have referred the matter at once for the court of appeal's orders, as to whether the property should or should not be sold in execution of their decree; and only inquired into the truth of the matter stated by the third party, if the court of appeal had desired him. 2. That the city judge having undertaken to pass an order provisionally suspending the sale of the property, until he should be further satisfied as to the matter, it required two judges of the court of appeal to set aside that order, viewed as a miscellaneous order of the city court, and to direct the sale to be proceeded with.

9. The Sudder Dewanny Adawlut therefore rescind the order to that effect, passed by Mr. Smith singly, unless it shall be confirmed by another judge of the court of appeal, to whom you will recommend the party interested to apply.

November 19, 1819.

No. 309.

1803
Reg XXVIII.
Sec. 17. Cl. 1.
1806.
Reg. II. Sec. 11.

To the Judge of Zillah Moradabad, dated the 17th December, 1819.

The Sudder Dewanny Adawlut have had before them your letter of the 20th ultimo, with its enclosure, relative to the case of Radha and Pran.

2. It is observed from your proceedings, that these persons were imprisoned on the 18th September, 1816, under a summary sentence passed by you as judge, in pursuance of clause 1, Section 17, Regulation XXVIII. 1803, for having aided and abetted in withdraw-

ing certain cattle, attached for arrears of revenue due to Government, the sentence reciting, in pursuance of that rule, that the defendants were to pay the costs of suit, and to be imprisoned until the property withdrawn for attachment should be restored ; or until the balance for which the attachment was made, amounting to above 800 rupees, should have been made good. And it is further observed, that neither of these conditions have been fulfilled, but that the defendants, alleging insolvency, and having made oath thereto, demand the benefit of the rules contained in Section 11, Regulation II. 1806, in favour of persons in confinement under decrees of the civil courts.

3. The above terms, which are taken from the regulation quoted, are general, so that the Court have held in former instances, that they include certain classes of summary cases, where any thing in the form of a summary decree by a civil court has actually been passed, and the defendant is in confinement under it as a debtor, but they are of opinion that the case in question does not, taken altogether, come within the provision of those rules.

4. The Court observe, however, that the case of these defendants, who have been in jail more than three years, is a hard one ; and they recommend that you suggest to the defendants, to petition the Board of Commissioners, affording them a copy of this letter and of the proceedings in their case, for the purpose. It is probable that the revenue authorities may afford them relief, or at all events, that they will ascertain whether the proper steps have been taken towards recovering the balance of revenue. You will report the result for the Court's information, in order that if relief should not be afforded under the orders of the Board of Commissioners, the Court may consider what further measures on their part the case will demand.

5. I am directed to add, that, in respect of the costs of suit, should the defendants ultimately be confined for these solely, the other parts of the sentence having been got over, the benefit of the insolvent rules may be granted.

December 17, 1819.

To the Acting Judge of Zillah Mymensing, dated the 1st January, 1820.

The Sudder Dewanny Adawlut have had before them your letter, under date the 18th ultimo, reporting the decease of Bhowanee Chowdraen, widow of the late proprietor of one anna, five gundas, forming part of the nine anna share of Pergunnah Sheerpore, now in course of partition, in pursuance of a decree of this Court.

2. It is observed, that you mention an adoption by the widow under alleged authority from her husband, which alleged authority is denied by the husband's collateral heirs, who have failed, however, in a criminal prosecution to establish that the written authority was a forgery ; and that you submit to the Court two points; 1, that the adopted son's right be acknowledged ; 2, that the natural father of the adopted son, now a minor, be nominated his guardian and manager of the estate.

3. I am directed to state, with respect to the first point, that the right being disputed, all that can be now admitted, is the possession of the fractional portion of the estate held by the deceased widow ; and the nine anna estate being stated to be under attachment, there can at present be only a symbol of possession, consisting of being registered as the person holding the fractional share, and being acknowledged as the person to whom the

No. 310.

1799.
Reg V
Secs 3 and 4.
1800
Reg I.

profits are payable. Your letter does not state, whether any or what part of this has taken place in favour of the alleged adopted son.

4. Should it have so taken place, and the possession, as far as possession can be now had, rest with the alleged adopted son, or even if there be no possession at all on either side, it appears to the Court, that under the provisions and spirit of Regulation V. 1799, the adopted son's possession should be acknowledged and upheld, provided you are satisfied, from what you have seen, that there is reasonable ground to believe his title good, and provided, on the collateral heir of the adoptive father filing a regular suit to try the question of right, sufficient security be given on his (the adopted son's) part for compliance with the judgment which may be passed : on failure of which security, and on its being given by the other claimants, their possession should, on the other hand, be acknowledged.

5. With regard to the second point, namely, appointing a guardian to the minor ; if he be considered the adopted son of the widow's husband, you must be guided by the provisions of Regulation I. 1800, which authorize the appointment, by the civil court, of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. Your appointment of a guardian in such case would be subject to the controul of this Court, in the mode provided for by Section 7 of the above quoted regulation.

January 1, 1820.

No. 311.

1813
Reg. VI. Sec 5,
Cl 1
1793.
Reg. XLIX
1798
Reg. V. Sec. 7.

To the Patna Court of Appeal, dated the 7th January, 1820.

I am directed to acknowledge the receipt of your letter, dated the 19th June last, submitting a question relative to summary decrees passed under clause 1, Section 5, Regulation VI. 1813.

2. The Court are of opinion, that those decrees must be considered open to appeal, but on the question of irrelevancy only. The summary decrees passed under Regulation XLIX. 1793, are expressly declared open to appeal on that ground by Section 7, Regulation V. 1798, and the rule must equally apply to the decrees in question.

January 7, 1820.

No. 312.

1814
Reg. I.

To the Moorshedabad Court of Appeal, dated the 1st April, 1820.

The Court having had before them your second judge's letter, under date the 13th ultimo, I am directed to communicate their opinion, that, under Regulation I. 1814, a deed of gift, drawn on unstampt paper by an attorney in Calcutta, for the conveyance of property at Moorshedabad, the donor being at the time a resident of Calcutta, and the donee a resident of Moorshedabad, is not admissible as evidence in our courts, as not being on the paper required by the regulation above quoted.

2. Your second judge has not stated the date of the deed to which his letter has reference, but the Court have assumed its execution to have been subsequent to the period at which the operation of Regulation I. 1814, commenced.*

April 1, 1820.

* See however the construction of 11th Aug. 1820, No. 124, page 113.

To the Acting Judge of Burdwan, dated the 5th May, 1820.

The Sudder Dewanny Adawlut have had before them your letter of the 29th ultimo.

2. On the second of the two points submitted, viz. whether the provisions of Regulation VII. 1799, are applicable to *lakhurajdas*, the enclosed extract (paragraph 5) from the resolutions of the Court under date the 22d January, 1805, is transmitted for your information and guidance. This, you will perceive, decides the point in the affirmative, assigning as the reason, that the words in the regulation are general.

3. With regard to the other point, whether *lakhurajdas* can have the advantage of Section 8, Regulation VIII. 1819, the Court observe, that the words of that section expressly specify "zemindars, that is, proprietors under direct engagements with Government," and that, therefore, the provisions of it must be considered restricted to the persons specified.

Extract from the Resolutions of the Court of Sudder Dewanny Adawlut, under date the 22d January, 1805.

PAR. 5. The Court further observe, that the original decision of the judge, dismissing the summary suit brought by the plaintiff under Regulation VII. 1799, on the ground of that regulation not being applicable to claims for arrears of rent due from lands exempt from the public revenue, was erroneous and unwarranted by the Regulations. The terms of Regulation VII. 1799, as well as Regulations XVII. 1793, and XXXV. 1795, therein referred to, being general, must be considered applicable to all claims for arrears of rent, whether due from lands paying revenue, or from lands held exempt from the public revenue, as has been declared by this Court in former instances.

May 5, 1820.

To the Magistrate of Juinpore, dated the 5th May, 1820.

The Nizamut Adawlut have had before them your letter, dated the 26th ultimo.

I am directed to state in reply, that the provisions of Regulation III. 1820, appear to the Court restricted to prohibiting compulsory exaction of the service of individuals as porters or *coolies*, in aid of travellers, or marching troops: that the prohibition extends; 1, to such service being compelled by travellers, or marching troops; 2, to its being compelled for them by the civil authorities; that, with the last exception, the rules of Regulation XI. 1806, stand as they were.

May 5, 1820.

To the Judge of Zillah Furruckabad, dated the 26th May, 1820.

The Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo.

2. In reply I am directed to state the opinion of the Court, that the process described in Section 11, Regulation XXVII. 1803, for confining the person of a revenue defaulter at the instance of the collector, may be had recourse to an account of all arrears of revenue of whatever standing, and cannot be considered as limited to balances arising within a period not exceeding one year.

May 26, 1820.

No. 313.
1793
Reg. No. VII.
1795
Reg. XXXV.
1799
Reg. VII.
1803
Reg. XXVIII.

1819
Reg. VIII Sec 8.

No. 314.
1820
Reg. III.
1806
Reg. XI

No. 315.
1803
Reg. XXVII.
Sec. II

No. 316.

1803.
Reg. XXVII
Sec. 14
Reg. XXVIII.
Sec. 17
1803.
Reg. II. Sec. 6.

To the Judge of Zillah Moradabad, dated the 2d June, 1820.

The Sudder Dewanny Adawlut have had before them your letter of the 16th ultimo.

2. It is understood by the Court to embrace two points: *First*, what is the limitation of time as to process by a collector for arrears of revenue, under Section 14, Regulation XXVII. 1803, by attachment and sale of a defaulter's personal property? *Secondly*, what is the limitation of time in respect of the summary proceeding at the collector's instance, under Section 14, Regulation XXVII. 1803, and Section 17, Regulation XXVIII. 1803, in the event of the attached property being removed, by force or fraud, by the defaulter, or his people.

3. On the first point, I am directed to state, that the Court hold it to be competent to a collector to resort to the process described in the regulation first quoted for balances of whatever standing. On the second point the Court hold, that the summary proceeding under Section 17, Regulation XXVIII. 1803, which clearly involves the adjudication of a penalty by the civil court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation II. 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the collector), there be good cause shewn for delay, beyond that period.

June 2, 1820.

No. 317.

1812.
Reg. I Sec. 22.

From the Acting Magistrate of Zillah Bundelcund, N. D., dated the 16th June, 1820.

I have the honor to forward, for the opinion of the Nizamat Adawlut, copy of a letter from the acting collector of this zillah, with its enclosure, and request the instructions of the Court as to complying or not, with the requisition therein made.

2. On a reference to Sections 22, 23, and 24, Regulation I. 1812, it appears to me, that the *darogahs* of *chowkees* therein alluded to, are *darogahs* of *chowkees* under the authority of the collectors of customs, not police officers; and as police officers are not enjoined by Section 29, Regulation XX. 1817, to take the active part, to prevent the evasion of duties, required by the Board in the present instance, I presume that such interference would be improper and against the regulations.

3. The duties of police officers are already very numerous, and need no addition.

Copy of a Letter from the Acting Collector of Calpee, to the Acting Magistrate, N. D. Bundelcund.

I beg leave to forward, for your information, extract of a letter from the Board of Commissioners, under date the 30th ultimo, and request that you will issue orders to the police officers under your control, as therein required.

Extract of a Letter from the Secretary to the Board of Commissioners to the Acting Collector of Calpee, under date the 30th May, 1820.

PAR. 4. Sections 22 and 23, Regulation I. of 1812, with a view to prevent the evasion of duties in the manner noticed in this paragraph, direct, that when goods are imported into a town, the *darogah*, at whose *chowkee* they may pass, shall certify on the back of the *rowannah* covering them the date on which they passed; the Board are of opinion that this rule should be observed by the police *darogahs* and *tehseldars* in

Bundlecund, with respect to salt *rovannahs*, and desire that you will instruct the *tahseeldars* accordingly, and that you will apply to the magistrate to issue corresponding orders to the officers under his controul.

To the Acting Magistrate of Zillah Bundlecund, North Division, in reply to the above, dated the 30th June, 1820.

The Nizamut Adawlut have had before them your letter of the 16th instant, with its enclosures.

The Court are of opinion, that the rule contained in Section 22, Regulation I. 1812, does not apply to *darogahs* of police ; and that the instructions, which the acting collector has called on you to issue to those in your district, would not be proper.

June 30, 1820.

To the Judge and Magistrate of Moradabad, dated the 7th July, 1820.

No. 318.

1818
Reg. XII.

The Court have had before them your letter, dated the 20th ultimo.

2. I am directed to state in reply, that the particular description of offences mentioned in the last section of Regulation XII. 1818, must still be viewed as public crimes ; that it is incumbent on the land-holders, and on the police, to report them ; that, where the injured party declines prosecuting, the magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. If, therefore, those cases only go unprosecuted, which the magistrate thinks fit to pass over, it must follow, that the magistrate should be able to prevent any material injury arising to the police from private compromises.

3. As to whether a compromise between the offender and the injured party, the consideration being, on the one side, forbearing to prosecute, and, on the other, restitution of value taken, is a contract to which the civil court should give effect, I am directed to answer the questions in the negative ; on the ground, that it is clearly contrary to public policy that such an encouragement to obstruct the course of criminal justice should be held out . and it is not clear, that the last section of the regulation, in giving to the injured party the discretion it has done, had in view any other motives of forbearance, than tenderness to the offender, or unwillingness to spare the time and trouble of prosecuting.

July 7, 1820.

To the Judge of the City of Benares, dated the 21st July, 1820.

No. 319.

1806.
Reg. II. Sec. 11.

The Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant.

2. I am directed to state, that the Court, in former instances, have held that the terms of Section 11, Regulation II. 1806, ("in confinement for satisfaction of decrees of the civil courts,") being general, the benefit of the section might be claimed by all persons in confinement under a decree, regular or summary; but not, where no sentence of the civil court, regular or summary, had issued.

July 21, 1820.

No. 320.

1819
Reg. II. Sec. 30.*To the Judge of Silloh Nuddea, dated the 28th July, 1820.*

The Sudder Dewanny Adawlut have had before them your letter, dated the 21st instant, with its enclosure.

2. The Court are of opinion, that the collector cannot, on the ground of the plaintiff being a public officer on his establishment, decline to take up the case referred to him under Section 30, Regulation II. 1819; inasmuch as the rule there laid down, that suits for the right of holding land free of assessment shall, when instituted in the *zillah*-court, be referred to the collector for investigation, is general and peremptory; and the plaintiff might, if he chose, have preferred the claim in the first instance to the collector, who could not then have avoided the jurisdiction.

3. Had it been the intention that any exception to the rule should be made, as in Regulation VIII. 1794, Section 13, and Regulation V. 1812, Section 21, it appears to the Court that the same would have been expressly stated.

July 28, 1820.

No. 321.

1814.
Reg. I Sec. 12.*To the Acting Judge of Shahabad, dated the 4th August, 1820.*

The Sudder Dewanny Adawlut have had before them your letter, dated the 19th ultimo.

2. On the question proposed, viz. whether under Section 12, Regulation I. 1814, a security bond for the rent of *malguzaree* land, executed to a land-holder on behalf of his tenant, (the Government not being a contracting party,) is, or is not, within the description of instruments which are receivable in evidence though written on unstampt paper, the Court are of opinion, that such security bonds, being within the reason of the exemption provided by that section, were meant to be included in it, and may be received in evidence, without a stamp.

August 4, 1820.

No. 322.

1799
Reg. VII.
1814
Regs. XXIII
and XXIV.*To the Acting Judge of Burdwan, dated the 4th August, 1820.*

The Sudder Dewanny Adawlut have had before them your letter of the 24th ultimo.

2. On the question contained in the last paragraph, I am directed to state, that the Court do not consider summary suits for rent under Regulation VII. 1799, to be referable to *sudder ameens*. The provisions of Regulations XXIII. and XXIV. 1814, which provide for civil suits being referred for trial to *sudder ameens*, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by those officers.

August 4, 1820.

No. 323.

1803.
Regs. XXVIII.
and XXII.
Sec. 2.*To the Judge and Magistrate of Moradabad, dated the 11th August, 1820.*

The Sudder Dewanny Adawlut have had before them two letters from you, dated the 21st and 24th ultimo.

2. In reply to the 1st, I am directed to state, that from a decree in a summary suit for arrears of revenue under Regulation XXVIII. 1803, no appeal lies, as to the merits of the summary decree. But, in such a case, as well as in other summary suits, an appeal

would lie on the question of relevancy, that is to say, on the question, whether the lower court had tried as a summary suit, what it had no jurisdiction so to try.

3. In reply to the second of the letters acknowledged, I am directed to state, that if you deem any order of the provincial court to have been irregular, as issuing to you, regarding civil matters, from the criminal department of that court, you should make your application to the Nizamut Adawlut, through the provincial court, under Regulation XXII. 1803, in order that the provincial court's reasons and explanation of their act may come before the Nizamut Adawlut at the same time with your objections.

August 11, 1820.

To the Judge of Moradabad, dated the 11th August, 1820.

No. 324.

1814.
Reg. I
Secs 9 and 11.

The Court have had before them your letter of the 21st ultimo, on the subject of *hoondees* written on plain paper.

2. In reply, I am directed to state, that under Sections 9 and 11, of Regulation I. 1814, bills of exchange executed on unstampt paper, within the provinces subject to the presidency of Fort William, would not be receivable in evidence in our courts; but if they were executed without our provinces, the Regulation would not apply to them.

3. If, on a bill of exchange, written on plain paper, and purporting to have been drawn without our provinces, being produced in evidence in a suit, the party interested in its rejection allege that it was drawn within our provinces, it would be incumbent on you to inquire into the point, with a view to determine the validity of the defendant's plea. And further, if, in the course of the evidence in a suit, it should appear, that an instrument adduced, and purporting to have been executed out of our provinces, had, on the contrary, been executed within them, and on plain paper, it would be incumbent on you to treat it as an instrument which ought to have had a stamp, but had none.

August 11, 1820.

To the Dacca Provincial Court, dated the 18th August, 1820.

No. 325.

1814.
Reg. I, Sec 9.

The Sudder Dewanny Adawlut have had before them your senior judge's letter of the 11th instant, with its enclosure.

2. As to the case which it represents, namely, where in a separate leaf of a merchant's books an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the Court consider, that the leaf having no stamp, the writing must be treated as a bond on plain paper; and rejected *in toto*.

August 18, 1820.

No. 326.

Reg VIII. Sec 9.
1819*To the Acting Judge of Burdwan, dated the 1st September, 1820.*

The Court having had before them the petition from the Raja, which was forwarded with your letter of the 25th ultimo, and the object of which was to obtain an order from the Court that sales, under Section 9, Regulation VIII. 1819, of *putnet* tenures in the Raja's *zemindaree*, should be made by the register of Burdwan at that station, even though the tenures should be situated in other *zillahs*, I am directed to communicate to you, that as the provisions of the Regulation quoted appear to the Court to require that such sales should be made by the register of the district where the tenures are, and at the *cutcherree* of such district, the Court are not competent to give a contrary order.

September 1, 1820.

No. 327.

Reg XXVIII.
Sec 6.
1803
1812
Reg. V. Sec 17.*To the Acting Judge of Etawa, dated the 1st September, 1820.*

The Court having had before them your letter of the 3^d ultimo, I am directed to state in reply, that the rule of Section 6, Regulation XXVIII. 1803, which provides, that in cases of illegal distress, there should be adjudged to the injured tenant restitution of the value lost to him by the distress, and as much again as damages, is considered by the Court to be equally intended by Section 17, Regulation V. 1812; which latter rule provides, that the tenant may have his remedy by a summary suit, which was before confined to a regular one. The quantum of the remedy allowed him is not considered to be altered.

September 1, 1820.

No. 328.

Reg. II Sec. 11.
1806.
1814
Reg. XXIII.
Cl 7, Sec. 45.*To the Judge of Beerbhoom, dated the 1st September, 1820.*

I am directed to state as follows, in reply to your letter of the 20th ultimo.

2. The rules of Section 11, Regulation II. 1806, for the relief of insolvent debtors, are construed by the Court to extend to all persons in confinement under decrees, regular or summary, of the civil courts, but not to those in confinement under any process where a decree of a civil court has not been given.

3. The rules of clause 7, Section 45, Regulation XXIII. 1814, make no alteration in this respect, except, that when the amount due under the decree does not exceed 64 rupees, six months is the maximum of imprisonment in satisfaction of it.

4. It does not follow, that the benefit of the insolvent rules may not be allowed within the six months under the Regulation of 1806.

September 1, 1820.

No. 329.

Reg. VIII. Sec. 8.
1819.*To the Acting Judge of Burdwan, dated the 15th September, 1820.*

The Sudder Dewanny Adawlut have had before them your letter of the 31st ultimo, and direct me to state in reply, that according to the spirit of Section 8, Regulation VIII. 1819, as the day for the presentment of petitions on the part of *zemindars* for the next half yearly sale falls in the vacation, it must be deemed commutable for the next day after the re-opening of the civil court, and the sale must not take place until a month from and after such day. It will be requisite that you should give due notice of this construction in the district under your charge.

September 15, 1820.

From the Acting Judge of Zilluh Bareilly, dated the 26th September, 1820.

I beg leave to request the opinion of the Court of Sudder Dewanny as to the construction to be put on the provisions of Section 16, Regulation XXVII. of 1803, as applicable to the following case.

2. A *malgoozar* is sent to the civil jail for confinement, on account of the non-payment of an alleged balance of revenue, due for a former, as well as the current year. Denying the justice of the demand, and furnishing the security required, he is released from confinement, and immediately enters a suit against the collector to try the justice of the claim. Is such suit to be considered and investigated as summary or regular? It appears to me that the Regulation above quoted provides for all such suits being considered as the former, and particularly points out a summary process and investigation as the proper mode of procedure. But as difference of opinion seems to exist on the subject, I beg leave to refer it in the decision of the Sudder Dewanny Adawlut.

To the Acting Judge of Bareilly, in reply to the above, dated the 17th November, 1820.

In reply to your letter under date the 26th of September last, I am directed to state the Court's opinion, that in the instance you represent, the suit instituted by the alleged revenue defaulter, under Section 16, Regulation XXVII. 1803, can only be tried as a regular suit.

November 17, 1820.

Extract of a Letter from the Fourth Judge of the Bareilly Court of Appeal, dated the 15th September, 1820.

PAR. 4. With reference to the provisions of Regulation XIII. 1808, [Section 11,] as Mr. Robertson conceives, that they do not extend to suits instituted under Regulation XXXIV. of 1803, I beg to solicit the opinion of the Sudder Dewanny.

To the Bareilly Court of Appeal, in reply to the above, dated the 24th November, 1820.

The Court have had before them your fourth judge's letter, with enclosures, under date the 15th September last.

2. On the point proposed for the Court's opinion in the last paragraph, I am directed to state, that in summary suits under Regulation XXXIV. 1803, if an appeal take place to the provincial court, on objections against the relevancy of that Regulation to the real facts of the case, the appeal court must exercise the same power as in other appeals with regard to staying execution, and the *zillah* judge must follow the same course as in other appealed decrees.

November 21, 1820.

To the Judge of the Southern Division of Bundelcund, dated the 22d December, 1820.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 5th instant, requesting the Court's construction of Section 13, Regulation XXIII. 1814.

2. The Court, understanding your query to be "whether, under the above section, *moonsiffs* are empowered to receive and try summary suits instituted for the recovery

No. 330.

1803
Reg. XXVII.
Sec. 16

No. 331.

1803
Reg. XXXIV.
1808.
Reg. XIII. Sec. 11.

No. 332.

1814
Reg. XXIII.
Sec. 13.

of arrears of rent, provided such arrears do not exceed 64 rupees," direct me in reply to acquaint you, that they do not consider summary suits for rent to be cognizable by *moonsiffs*.

3. The provisions of Regulation XXIII. 1814, which relate to the trial of civil suits to a certain amount by *moonsiffs*, intend regular suits, and the Court are not aware of any separate provision which allows summary suits to be tried by these officers.

December 22, 1820.

No. 333.

¹⁸⁰³
Reg. XXVII
Secs 19 and 16

To the Judge of Zillah Cawnpore, dated the 29th December, 1820.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 7th instant, requesting the Court's constructions of two passages in Regulation XXVII. 1803.

2. In reply, I am directed to communicate to you the opinion of the Court, that the term "property," which occurs in Section 19 of the Regulation above cited, "lands or other property," must be considered to mean *real* property of which, security given by the defaulter, and the institution of a suit by him under Section 16 to try the justness of arrears of revenue demanded of him, would prevent the sale; but not the distrant and sale of that personal property, which the collector is, under the rule contained in clause 2, Section 14 of the Regulation in question, authorized to distrain and sell.

3. The Court are not apprized in the 6th paragraph of your letter above acknowledged, what description of property (belonging to the petitioners) the collector proceeded to sequester and to sell. If personal property, under the clause last cited, the Court are of opinion, that he was authorized in so doing, and that the civil court has no right of interference.

4. If, on the other hand, the collector proceeded to the sale of the land or other *real* property of the petitioners, the Court, under the construction given to Section 19, of Regulation XXVII. 1803, are of opinion, that such proceeding was illegal; and might be legally prevented by the civil court in which the security had been given, and the suit instituted by the defaulter to try the justness of the arrears of revenue demanded: it being of course understood, that the balance [for which the collector would proceed to sell] is the same with that for which the defaulter has furnished security and instituted a suit.

December 29, 1820.

No. 334.

^{1817.}
Reg. XVIII.

From the Acting Judge of Zillah Mirzapore, dated the 10th December, 1820.

I have the honor to acknowledge the receipt of your letter of the 7th ultimo, and in reply beg leave to state for the information of the Court, that a summary sentence, in strict conformity with Regulation XVIII. 1817, adjudging the particular sums recoverable from the late treasurer Rammohun Mozoomdar, has not been passed by me; although the fullest inquiry has been made, and the sums due from him have been ascertained, as stated in my letter to your address, with enclosures, dated the 20th October last.

2. I enclose copies of two *roobucarees*, dated the 24th October and 16th November last, which will shew the nature of the proceedings I deemed it proper to hold in the civil court in this case. It will be observed, that on the commitment of Rammohun Mozoomdar for trial to the court of circuit, considering the sums specified in my proceedings as due from the treasurer to have been sufficiently ascertained, (for he even does not deny that these sums are due,) I proceeded to recover the amount in the manner prescribed for the execution of decrees.

3. Having however omitted to pass a summary decree in strict conformity with the Regulation, I request to be favored with the Court's instructions, whether, with reference to the proceedings already held by me, such a course is still necessary. It does not appear to me to be too late to pass a summary decree, which would have the effect to sanctioning the measures that have been adopted to recover the balance.

To the Acting Judge of Zillah Mirzapore, in reply to the above, dated the 29th December, 1820.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 18th instant, together with its enclosures, and in reply to desire, that you will now proceed, in conformity with Regulation XVIII. 1817, to hold a summary inquiry relative to the embezzlements of the late treasurer of your court, Rammohun Mozoomdar, and to pass a summary decree, (adjudging the particular sum recoverable from him,) according to the rule laid down in the Regulation above quoted.

December 29, 1820.

To the Judge of Zillah Beerbhoom, dated the 2nd February, 1821.

No. 335.

1793
Reg. X.
1799
Reg. VII. Sec. 26.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 22nd ultimo, submitting queries relative to suits in which minors and other disqualified land-holders may be parties.

2. In reply I am directed to acquaint you, that the Court do not consider it necessary to reply separately to each of the queries contained in your letter above acknowledged, but direct me to communicate their opinion generally, that the *surberahkar*, or manager, should, in all cases affecting the estate, real or personal, of the minor or disqualified land-holder, both sue and defend in the civil court, under the instructions which he may receive from the court of wards; and that, as the interests of Government cannot be ordinarily supposed to be concerned in such suits, he (the *surberahkar*) has no more right to command the aid of the government pleader, than any other individual suitor, or defendant.

3. In the case of a minor, whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.

February 2, 1821.

No. 336.

1819.
Reg. IX. Sec. 3,
Cl. 1.*To the Judge of Zillah Midnapore, dated the 23rd February, 1821.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 17th instant, and under the explanation therein contained, to acquaint you, that the Court do not consider it necessary, under clause 1, Section 3, Regulation IX. 1819, that any report should be made to a provincial court of appeal by the judge of a zillah or city court, previously to his admission of a special appeal from the decision of a register; and consequently that he is at liberty to reject or admit an application for such special appeal, without any reference to the provincial court of appeal.

February 23, 1821.

No. 337.

1793
Reg. VII.
1800
Reg. V.*To the Judge of Zillah Ghazeepore, dated the 23rd February, 1821.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 9th instant, and in reply to acquaint you, that the Court have frequently determined upon former references, that the rules for distraint, under Regulation VII. 1799, [extended generally to Benares by Regulation V. 1800,] being general, must be understood to apply to the rents of lands held exempt from the public assessment, as well as to the rents of lands subject thereto.

February 23, 1821.

No. 338.

1817.
Reg. XIX. Sec. 9,
Cl. 3.
1819.
Reg. II Sec 30,
Cl. 7.*To the Judge of Zillah Midnapore, dated the 18th May, 1821.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 10th instant.

2. In reply I am directed to communicate to you the opinion of the Court, that with reference to the value of the stamp paper, on which the appeals referred to in your letter are directed to be written by the clause and section of the Regulation cited, (clause 7, Section 30, Regulation II. 1819,) the appeals should be considered summary in as far as relates to the fees to which the pleaders employed in such suits may be entitled; but that, with reference to clause 12 of the same section, the Court consider, that the trial and decision of such causes should be regulated by the mode of procedure observed in a regular appeal.

3. Under the opinion above expressed, and with reference to the rule contained in clause 3, Section 9, Regulation XIX. 1817, it will of course be requisite that a deposit be made in the first instance for the fees of the pleaders employed in such appeal.

May 18, 1821.

No. 339.

1798
Reg. I. Sec. 2.*To the Judge of Zillah Ghazeepore, dated the 25th May, 1821.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant.

2. In reply, I am directed to acquaint you, that the Court, with reference to the last paragraph of the Circular Orders of the 22d July, 1813,* consider it to have been determined, that the borrower is entitled to receive possession summarily on depositing the principal

* See C. O. S. D. A. of this date, No. 37, page 27, vol. I. part I. B. M. P. Edition.

sum borrowed, as required by Section 2, Regulation I. 1798, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession.

3. The case, therefore, put in your letter, of the borrower alleging the principal of the debt to have been realized from the *usufruct*, which allegation the lender in possession denies, must be the subject of a regular suit, and cannot be decided summarily.

4. If however the borrower, persisting in his allegation, deposit the principal sum, merely for the purpose of regaining possession of his lands, he may, of course, subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs upon his proving that it really was not due.

May 25, 1821.

To the Bareilly Court of Circuit, dated the 25th May, 1821.

No. 340.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated the 11th instant.

1819.
Reg. VII. Sec. 6.
Cl. 3.

2. In reply I am directed to communicate to you the opinion of the Court, that the rule contained in clause 3, Section 6, Regulation VII. 1819, cannot be considered applicable to European British subjects, and that consequently, under the general Regulations, an award by a magistrate, (even though a justice of the peace,) of the nature alluded to in the latter part of the first paragraph of your letter, is unauthorized and illegal.

3. You are of course at liberty to consult the Advocate General, as to how far he may consider such a decision legal under the act of parliament, to interpret which does not fall within the province of this Court.

4. It is at the same time obvious to remark, that from a conviction of a British subject by a magistrate, in his capacity of justice of the peace, under 53 George III. cap. 155, the appeal is not to a court of circuit, but to the Supreme Court in Calcutta,* 1807, Regulation IX. Section 23.

May 25, 1821.

To the Acting Judge of Zillah Jungle Mehals, dated the 1st June, 1821.

No. 341.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, dated the 23rd ultimo.

1814
Reg. I. Sec. 11.

2. In reply to the first question contained in your letter, the Court have directed me to communicate to you their opinion, that a person becoming security for the payment of a bond, and affixing his name to the deed in recognition of his responsibility, is liable to be sued as a party with the principal, the transaction being as it were a joint one; and that it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on separate stampt paper of the same value as that of the original obligation.

* See Construction of the 20th July, 1821, No. 345, page 142.

3. In answer to the second question, the Court have directed me to acquaint you, that they do not consider acknowledgments of partial liquidations of the amount of a bond due, of the nature contemplated in this question, (by instalments it would seem,) to be of the description alluded to in Section 11, Regulation I. 1814, and therefore that it is not necessary that each separate acknowledgment of this kind should be executed on stamp paper of the value prescribed by the Section above quoted, to render it admissible in evidence of payment.

4. In reply to the third query contained in your letter, the Court desire me to communicate to you their opinion, that they do not, in the transfer by sale, &c. of a house or other real property, consider an acknowledgment by the seller of the receipt of the purchase money to the purchaser, written on the back of the original title deeds, to be sufficient. The transaction in the case in question is evidently a distinct one between the parties concerned, and as such the Court are of opinion, that a *separate* acknowledgment should be executed on paper bearing the prescribed stamp, before it could be received in evidence in the course of a suit on the subject of such transfer.

June 1, 1821.

No. 342.

1803
Reg. XXXII.
Sec. 6
Beng. 1793
Reg. XLIX.
Sec. 6.

To the Acting Judge of Zillah Etawah, dated the 6th July, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 22nd ultimo, and in reply to the first question contained in that letter, to communicate to you the opinion of the Court, that under the spirit of the Circular Orders of the Sudder Dewanny Adawlut of the 25th October, 1797,* the judge may in the case supposed, [viz. in a case in which the decision of the *zillah* judge adjudging the forfeiture, at the suit of the *vakeel* of Government, of land, in consequence of an affray attended with homicide by the parties claiming possession of it,] direct the Government pleader to appeal specially, should he see adequate grounds for preferring such appeal.

2. The Circular Orders of the 27th September, 1806,† the Court observe, do not appear to be applicable to the point referred by you.

3. In answer to the second question contained in your letter, the Court direct me to acquaint you, that a report of such property as may have been adjudged forfeited to Government under the rule specified in Section 6, Regulation XXXII. 1803, should of course be made to Government for their final orders and disposal of the same.

July 6, 1821.

No. 343.

1803
Reg. XXIV.
Secs. 2 and 16.
1817.
Reg. VI. Sec. 2.

To the Court of Appeal for the Division of Benares, dated the 6th July, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a certificate from your senior judge, under date the 15th of May last, together with the correspondence and Persian proceedings which accompanied it.

2. In reply I am directed to acquaint you, that the Court concur in the opinion expressed by the senior member of the Board of Commissioners for the upper provinces in

* See Cir. Ord. N. A. of this date, No 14, page 6, vol I. B. M. P Edition.

† See Cir. Ord. S. D. A. of this date, No. 17, page 12, vol. I part I. B. M. P. Edition.

his letter, under date the 27th April last, that claims, similar to those wished to be preferred by Mohummud Nuseer, are cognizable only by the revenue authorities, and that therefore the suit which the person above-mentioned is desirous of bringing in your court against the collector of Allahabad cannot be legally entertained by your court.

3. The Court observe, from the proceedings held by your senior judge on the 3rd April, 1821, that it is therein distinctly stated, that the pension granted to Mohummud Nuseer's father, Shah Jaroollah, was not in commutation of, or indemnification for land, so as to bring the case within the scope of the rule of Section 2, Regulation XXIV. 1803, which circumstance alone is sufficient to exclude the Court from receiving and trying such claim preferred against the Government.

4. The Court further remark, that even had Mohummud Nuseer's claim been receivable under the section of the regulation above cited, it would have been inadmissible under the explanation given to that section by Section 2, Regulation VI. 1817, which declares, that it was not thereby intended to authorize the courts of civil justice to take cognizance of claims to any pensions of the nature alluded to in that section, the original title to which had not been previously recognized and confirmed by the revenue authorities, or by Government; whereas it would appear, from the Acting Secretary's letter to the Board of Commissioners, under date the 23rd February, 1821, that, in the case in question, the claim of Mohummud Nuseer and others had been adjudged by the Board of Commissioners in the year 1808, to be inadmissible.

5. As the Government cannot in such a case be sued, so it is equally clear from the 16th Section of Regulation XXIV. 1803, that the collector cannot be liable to an action for declining to pay an unauthorized pension.

July 6, 1821.

*Extract from a Letter to the Judge and Magistrate of Zillah Moradabad, dated the
13th July, 1821.*

I am directed by the Court of Sudder Dewanny Adawlut and Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 14th May last, together with the papers, Persian and English, which accompanied it.

* 2. In reply to the first and second queries contained in that letter, the Court direct me to communicate to you their opinion, that the provincial courts of appeal and circuit do possess the power to rescind the orders which a magistrate may have passed for the suspension of one of his public officers, pending the investigation into his conduct; but that they are at the same time of opinion, that this power should be exercised with caution and due discretion.

3. In answer to the third query contained in your letter above-mentioned, the Court instruct me to acquaint you, that the provincial court must, of course, judge whether further inquiries be necessary, previously to passing final orders on such documents as may have been forwarded on their requisition by a local officer.

4. In reply to the fourth question, the Court direct me to inform you, that they are not aware of any objections to petitions of the description alluded to being received by a provincial court, provided they be written on paper of the prescribed stamp and value

No. 344.

1809
Reg. VIII Sec. 7.
1816
Reg. XVII. Sec. 7.

5. With regard to the fifth question, the Court direct me to acquaint you, that the provincial courts are at liberty to adopt their own mode of communication with the ministerial officers and pleaders of a judge and magistrate's court, and to act on petitions (written as above) forwarded to them (by dawk) by such ministerial officers. The Court remark, that it can hardly be expected that a ministerial officer of the court of a judge or magistrate, by whose act he may deem himself aggrieved, should chuse *that* judge or magistrate as the channel for forwarding his petition of complaint.

6. In answer to the sixth question, I am directed to acquaint you, that, generally speaking, it is not of course consistent with propriety, that "the veracity of an official statement, "made on the responsibility of an European public functionary, should be impeached without "proof, on suspicion;" but the Court are of opinion, that such functionary should consider, whether the provincial court question *his* veracity, or the truth of the evidence upon which he is acting. In the case of Ateroollah, the Court are of opinion that the latter was intended.

¹⁸⁰³
Reg. XXII. Sec. 2.

8. With regard to the opinion expressed in the third paragraph of your letter, the Court direct me to acquaint you, that they are of opinion, that the provincial court should have referred the doubts you entertained for the sentiments and orders of the Court, in conformity with the rule contained in Section 2, Regulation XXII. 1803.

July 13, 1821.

No. 345.

¹⁸¹⁹
Reg. VII Sec. 6.

To the Bareilly Court of Circuit, dated the 20th July, 1821.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 2d instant, together with its enclosure from the magistrate of zillah Moradabad, dated the 27th ultimo.

2. The rule contained in clause 3, Section 6, Regulation VII. 1819, being clearly not applicable to European British subjects as defendants, and it appearing from Mr. Halhed's letter to your court, that he is in possession of a copy of my letter to your address, bearing date the 25th of May last,* the Court are not aware of the necessity of any further orders on the subject of Mr. Halhed's enclosure in your letter above acknowledged. With respect to the query occurring in the second, and at the conclusion of the third paragraph of Mr. Halhed's letter, it is obvious, that clause 4, Section 16 of the above cited Regulation cannot be acted upon at all against such masters or persons, as may not be liable to the regulation and subject to the magistrate's authority; at the same time, that against such servants as are liable and subject, the regulation may be acted upon, even in favor of those very masters who are exempted from being made defendants.

July 20, 1821.

No. 346.

^{1793.}
Regs. III. IV.
and XIX.

Letter from the Judge of Madnapore, dated the 25th July, 1821.

I request you will obtain the opinion of the Sudder Dewanny Adawlut on the following query, for my information.

2. Can a *zemindar* institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred *beegahs*, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December,

* See Construction of the 25th May, 1821, No. 340, page 139.

1790 ; provided that each of the said grants does not exceed *one hundred begahs*, and provided further, that the plaintiff, prior to the institution of the suit, has no means of ascertaining the exact quantity of land comprised in each of the said grants.

3. The grants alluded to are of course presumed to have been made since the 12th August, 1765, and not to have been subsequently confirmed by any competent authority.

To the Judge of Zillah Midnapore, in reply to the above, dated the 3rd August, 1821.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 25th ultimo, and in reply to acquaint you, that as the Court cannot find any provision or provisions in Regulations III. IV. and XIX. of 1793, which *prima facie* can be construed as prohibitory of the institution of such a suit as supposed in your letter, they are of opinion, that it ought to be entertained, leaving its legality and the plaintiff's right to be decided upon investigation of the facts of the case.

August 3, 1821.

Extract of a letter from the Register of the Nizamut Adawlut, to the Dacca Court of Circuit, dated the 29th March, 1822.

No. 347.

1818
Reg. VIII.

6. The Court having perused the remark made by your third judge in the case of Nargassee, (No. 5, of the abstract calendar of persons detained for security, whose cases were examined by him,) are apprehensive, that Mr. Paton must be labouring under some misconception of the Court's former orders.

7. The Court entirely concur with your third judge in opinion, that the period fixed for the detention of a person from whom security is required should correspond with the period for which the surety is required to be responsible, and *vice versa*; and on reference to the instance in which your third judge states this opinion to have been over-ruled, the Court cannot discover anything at variance with the principle here laid down.

8. On that occasion it was merely ruled, that where a case is brought before a judge of circuit by petition from a security prisoner, there is no discretion to enhance the period of detention.

9. Instead of ordering an enhancement of the period of detention from six months to one year, with a view of making it correspond with the period for which security was required by your third judge, had he in the case alluded to, reduced the period for which security was required from one year to six months, with a view to the same purpose, the orders would have been perfectly legal and correct.

10. But in declaring that the terms for which the sureties are to be responsible, and for which eventual detention should be commensurate, the Court by no means intend that that principle, though obviously equitable, should operate to the prejudice of a prisoner, or that this should be construed to justify any order unauthorized by the regulations.

11. With the view of putting your third judge more fully into possession of the sentiments entertained by the Nizamut Adawlut, I am desired by the Court to forward to you the accompanying copy of a letter written by order of the Court to the Calcutta court of circuit, on the 22nd ultimo, on the subject of certain security cases revised by the fourth judge of the Calcutta court of circuit, on the conclusion of the 2nd sessions of 1821, for *zillah* Burdwan.

No. 348.

1812
Reg. V Sec. 15
1799.
Reg. VII Sec 9.

To the Judge of Zillah Alluhabad, dated the 19th April, 1822.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant.

2. In reply to your first query, I am desired to state, that in the opinion of the Court, individuals other than the alleged defaulter or his surety, who may lay claim to distrained property, are not entitled to the release of such property on furnishing security, nor can their claims to it be investigated, according to the provisions of Section 15, Regulation V. 1812.

3. In reply to your second query, the Court direct me to acquaint you, that in the event of an alleged defaulter's property being sold from his inability to furnish security, he may have a summary action; but that any claim to such property preferred by a third person, not being the alleged defaulter or his surety, must be investigated in a regular suit, under Section 9, Regulation VII. 1799.

April 19, 1822.

No. 349.

1793
Reg. XLV.
1819
Reg. VIII.

To the Judge of Zillah Midnapore, dated the 26th April, 1822.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, requesting to be informed by whom the public sales of *putnee* and *durputnee* tenures in execution of decrees are to be conducted.

2. In reply, I am desired to communicate to you, that in the opinion of the Court such sales should be conducted by the collector.

April 26, 1822.

No. 350.

1810
Reg. XIV
Secs. 3 and 4.

Minutes of the Judges, recorded the 31st September, 1822.

Under the provisions above quoted, I have lately concurred with our second judge, in mitigating punishment in the cases of a number of prisoners confined in the Allipore jail, under sentence passed on them for burglary.

2. The second judge having recently proposed to me to join him in mitigating punishment in the case of certain prisoners, sentenced as receivers of stolen property acquired by gang-robbery, I have been induced to call for the proceedings of this Court in cases where mitigation or remission has been ordered since the enactment of Regulation XIV. of 1810, and I find, that on the 18th of June, 1812, the Nizamut Adawlut applied to Government to obtain the remission of a sentence of seven years' imprisonment passed on Himmuth Singh in a case of affray, in consideration of services afforded to the public by his family, and stated, that they did not consider themselves competent under the existing regulations to sanction that measure.

3. I also find in a note affixed to Mr. White's copy of Regulation XIV. 1810, that on the 3rd of September, 1812, a construction was given by the Court of Nizamut Adawlut that they considered themselves empowered, under Section 3, to grant a remission or mitigation for any cause personal to the prisoner, but not from a cause not personal.

4. As the present practice of the Court would appear to be at variance with the constructions above quoted, and as scarcely a day passes without several cases of prisoners

confined under sentence for burglary coming before us for mitigation, I beg to be favoured with the opinions of the judges, how far we are warranted in granting remission or mitigation without the sanction of Government; and if doubts exist, whether it will not be proper to have them cleared up by a special enactment.

J. T. SHAKESPEAR.

It is my opinion, that under the 3rd and 4th Sections, the Court can remit or mitigate in all cases duly before them, on sufficient ground assigned, connected also with the evidence on a review of the case. There is, I believe, a later regulation to mitigate in case of meritorious conduct, as that of Himmum.

W. LEYCESTER.

1. It is clear, that we may mitigate upon any ground that is judicial, and it is upon this construction that we remit in burglary cases, deciding that the original sentence was unduly severe.

2. A, being young and stout, is imprisoned for unaggravated burglary, under a sentence of 14 years. We think the sentence too severe by seven years, and reduce it accordingly. This is within our competence.

3. B, in the last stage of infirmity, is imprisoned under a sentence of 14 years, for an aggravated burglary, in which we cannot consider the original sentence as more than he deserved. Here we cannot touch the sentence, the ground being personal to the prisoner, and Government being the proper and sole fountain of mercy.

C. SMITH.

1. The construction of September 3rd, 1812, by Messrs. Fombelle and Burges, (if they intend, under Regulation XIV. 1810,) appears to me wrong.

2. I apprehend, that regulation gives the Court no power to exercise mercy, which is the prerogative of the Government, but to mitigate punishment on judicial reason assigned for so doing, and apparent on the record of the case, and strictly connected with the case, and not extraneous.

3. Whether the instance of a prisoner proving blind, or maimed in body, at the time sentence is to be passed on him, may be deemed a ground for mitigation, under the above regulation, may be doubted, for that is not connected with the circumstances of his case; but I am clear that if, at any time after sentence, a man become an object of compassion from bodily ailment, the Government only can interfere to pardon.

4. The cases of burglary, in which we have remitted punishment partially, were such as on the circumstances appeared to us too harshly dealt with originally. We remitted on a review of the proceedings.

W. DORIN.

W. B. MARTIN.

To the Judge of Zillah Allahahad, dated the 24th January, 1823.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosed copy of a petition of plaint instituted in your court by Ramchunder Waugh, and requesting the Court's opinion as to whether the suit is

cognizable by you, " the debt having been originally incurred in Nagpore, the bond which " is the immediate ground of the present action having been executed at Allahabad, and the " defendants being at the date of the institution of the suit resident at Nagpore."

2. In reply, I am desired to acquaint you, that under the circumstances stated, the Court do not perceive any ground on which you can assume jurisdiction. The cause of action, that is to say the debt, originated in a foreign territory, where the defendants still continue to reside. The subsequent execution of the bond within your jurisdiction is immaterial to the present question, as that instrument cannot be termed the cause of action, being merely evidence of the debt, which is the cause of action.

3. The Court are therefore of opinion, that you should not take cognizance of the suit.

January 24, 1823.

No. 352.

To the Patna Court of Circuit, dated the 2nd May, 1823.

Reg. XVII. Sec. 7.
¹⁸¹⁷

The Court of Nizamut Adawlut have had before them your fourth judge's letter, dated the 19th ultimo, in reply to the orders of this Court, under date the 7th of March last.

2. I am desired to communicate to you for the information and guidance of your fourth judge, that the explanation furnished by him regarding the punishment of stripes inflicted upon the prisoner Sohrye is by no means satisfactory, and that in the opinion of the Court the 7th Section of Regulation XVII. 1816, was merely intended (as is manifest from the wording of the doubt which the enactment was made to explain) to limit the term of imprisonment in commutation of the *deyut* to seven years, and not to authorize the infliction of stripes, which punishment the Court conceive can hardly be applicable with propriety to any case of culpable homicide.

3. The Court therefore desire, that in future your fourth judge will refrain from awarding the infliction of corporal punishment in similar cases.

May 2, 1823.

No. 353.

Reg. LIII. Sec. 2.
^{1803.}
Cl. 7.

Extract of a Letter from the Register of the Nizamut Adawlut, addressed to the Bareilly Court of Circuit, dated the 9th May, 1823.

PAR. 3. Upon the second point, the Court are of opinion, that the remark contained in the sentence of the 25th of February was correct. The regulations prescribing no specific punishment for his offence, [sodomy,] and the *futwa* of the law officers upon conviction being usually one of discretionary punishment by *tazeer*, it must be considered as falling under the rule laid down in clause 7th, Section 11, Regulation LIII. 1803. The Court observe, therefore, that there is no necessity for referring such cases to this Court, unless the judge of circuit should differ in opinion with his law officer, as to the proof of the offence, or deem the punishment of 39 stripes and imprisonment with hard labour for seven years insufficient.

May 9, 1823.

To the Calcutta Court of Appeal, dated the 30th May, 1823.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th instant, transmitting a copy of a proceeding held by the present judge of Burdwan, and requesting the Court's opinion, as to whether, under clause 1, Section 3, Regulation IX. 1819, you are competent to authorize him to admit a special appeal, which had before been rejected by the former judge.

No. 354.
1819
Reg. IX Sec 3,
Cl 1
1814
Reg. XXVI.
Sec 2, Cl 6

2. In reply, I am desired to acquaint you, that you appear to have mistaken the intent and meaning of the clause and section quoted by you ; which provision was merely intended to afford a facility to an appellant desirous of preferring a special appeal to the provincial court, in obtaining the admission of such appeal, by authorizing the *zillah* judge whenever from peculiar circumstances he may deem it desirable that the further appeal should be admitted, to certify to the superior court his opinion to that effect ; and that it was by no means intended to confer on the provincial court the competency to authorize an admission by the *zillah* judge in his own court of a special appeal from the judgment of an inferior court, when under the general regulations such appeal is inadmissible.

3. Under the circumstances of the case submitted by you, it appearing that the former judge rejected the petition of special appeal preferred after two decisions. I am desired to acquaint you, that his order must, by clause 6, Section 2, Regulation XXVI. 1814, be considered final, and that no special appeal can now be admitted.

May 30, 1823.

To the Judge of Zillah Allahabad, dated the 26th September, 1823.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 2nd instant, soliciting the opinion of this Court, as to whether an appeal from an order passed by a register fixed at any other than the *sudder* station, in a case of execution of a *moonsiff's* decree, taken up and decided by him under the authority vested in him by Section 12, Regulation II. 1821, is to be made to the judge, in the same manner as if the case had been referred to him by the latter, under clause 2, Section 7, or whether it must be made to the court of appeal ; and also whether the special appeal from an order passed by such register, in appeal from a *sudder ameen* in a case of the kind referred to him for execution by the latter, under the section first alluded to, is to be made to the judge or court of appeal.

No. 355.
1821
Reg. II. Sec 12.

2. In reply, I am desired to communicate to you the opinion of the Court, that in both cases the appeal lies to the judge, and not to the court of appeal.

September 26, 1823.

To the Judge of Zillah Moradabad, dated the 24th October, 1823.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, requesting the opinion of the Court, as to whether a register having the additional powers specified in Regulation XXIV. 1814, is authorized to try suits to an amount exceeding 5,000 rupees, and also, whether a register exercising the additional powers above specified, is authorized to try cases in appeal from the decision of the collector or assistant collector.

No. 356.
1814
Reg. XXIV. Sec 9,
Cl 6
1817
Reg. XIX. Sec. 2.

2. In reply to your first query, I am desired to communicate to you the opinion of the Court, that agreeably to the spirit and intent of clause 6, Section 9, Regulation XXIV. 1814, a register specially empowered under that clause is authorized to try and decide any suits referred to him by a judge, whether instituted under the provisions of Section 2, Regulation XIX. 1817, or under the rules previously existing.

3. With reference to your second query, I am desired to state, that you have not been sufficiently specific, and to direct, that you will name the description of decisions passed by a collector, (quoting the particular regulations under which they are passed,) regarding which you request the opinion of the Court, as to whether or not they are cognizable by a register especially empowered.

October 24, 1823.

No. 357.
1807
Reg. IX Sec. 22.

*Extract of a Letter from the third Judge of the Dacca Court of Circuit on the termination
of the first sessions of 1823 for Dacca Jelalpore, dated the 1st August, 1823.*

PAR. 9. In the firm persuasion that such a system and the general derangement of authority could not have been long maintained, as they appear to have been, unless encouraged and promoted by the supineness of the late acting magistrate, I enjoined his successor Mr. Turquand to select and submit to me such cases, or *nuthees*, wherein the decisions passed by the former officer might justify revision, by directing the arrangement of the parties, if practicable by their apprehension, before a more competent tribunal, and he accordingly sent me 51 cases; 38 of which have been returned, some, on account of the circumstances therein recorded being irrelative to the object proposed, others, as being of too distant a date, and affording from want of proof no rational hope of being brought to a successful issue; many, as being of too trifling a nature, perhaps inadvertently transmitted, and the rest, either from the complaints appearing *prima facie* to be false, or from the judgments being appropriate. In seven I recorded my opinion for the immediate adoption of measures for further investigation, and the eventual commitment of the accused, which has been confirmed by the Court. But exception having been offered by it to the opinions I also recorded on the remaining six, on the ground of the assumed incompetency of the circuit judge, under Sections 22 and 23, Regulation IX. 1807, to disturb by revision the decisions passed by the magistrate anterior to his circuit, the calendars of which had been presented to a preceding judge, and against which no petitions had now been preferred, I submit the cases for the consideration of the Nizamut Adawlut.

*Extract of a letter from the Register of the Court of Nizamut Adawlut submitting the above
letter to the Chief Secretary to Government, dated the 31st October, 1823.*

PART OF PAR. 31. On the subject of the six cases referred to, in the 9th paragraph of Mr. Mitford's letter, I am desired to observe, that they will be returned with the opinion of the Court, that Mr. Mitford was competent to investigate them, but that final orders should be passed by the court of circuit collectively; the fact of the calendars having been presented to a preceding judge under Section 22, Regulation IX. 1807, not being sufficient to deprive him of such authority.

October 31, 1823.

To the Bareilly Court of Circuit, dated the 7th November, 1823.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th ultimo, forwarding the explanation of the magistrate of Agra, in the case of Nundun Singh, called for by the Court's orders of the 22nd of August last.

2. In reply I am desired to acquaint you, for the information and guidance of the magistrate, to whom you are requested to make the requisite communication, that in the opinion of the Court, in cases of theft, a magistrate is not competent to pass sentence of imprisonment exceeding six months, unless the theft should have been attended by one or more of the six aggravating circumstances enumerated in clause 4, Section 3, Regulation XII. 1818.

3. As no one of the aggravating circumstances enumerated in clause 4 appear to have existed in the case of Nundun Singh, you are requested to revise the magistrate's sentence, and provide for the liberation of the prisoner after six months' imprisonment.

November 7, 1823.

To the several Courts of Appeal in the Western and Lower Provinces, dated the 19th December, 1823.

The Court of Sudder Dewanny Adawlut having reason to believe, that a variance of opinion exists among the different courts as to the intent and meaning of the provision contained in Section 6, Regulation XV. 1793, and the corresponding provision in Section 5, Regulation XXXIV. 1803, I am desired to call your attention to the precedent established in the cause Musst. Mukhun, appellant, *versus* Mohunt Rampersaud, respondent, decided on the 13th of July 1808, by two judges of the Sudder Dewanny Adawlut, (page 172 of the printed civil reports,*) and at the same time to acquaint you, that the Court at large have resolved to adhere to the construction contained in that decision; namely, that the restriction contained in the section above quoted, against a judgment for interest exceeding the amount of the principal, when the legal interest shall have accumulated so as to exceed the principal, is not applicable when the accumulation is subsequent to the institution of a suit; and therefore not ascribable to procrastination on the part of the creditor.

2. You will be pleased to furnish the several judges within your division with a copy of this letter for their information and guidance.

December 19, 1823.

To the Dacca Court of Circuit, dated the 26th December, 1823.

The Court of Nizamut Adawlut have had before them a letter from your fourth judge, dated the 17th instant, requesting to be informed whether, in the opinion of the Court of Nizamut Adawlut, a sentence of *tushheer*, in addition to fourteen years' imprisonment, can be carried into execution against a prisoner convicted of three offences, on three separate commitments, for the whole of which your fourth judge is of opinion, that the maximum of imprisonment within the competence of the courts of circuit, limited by clause 1, Section 2, Regulation XV. 1814, of fourteen years in the aggregate is sufficient, but for one of

No. 358.

1818
Reg XII Sec 3,
Cl 4.

No. 359.

1793
Reg XV Sec. 6.
1803
Reg. XXXIV.
Sec 5.

No. 360.

1814
Reg XV Sec 2,
Cl. 1.

* Page 242, Vol. I. of the Bishop's College Press Edition.

which offences, [subornation of perjury,] he deems the prisoner deserving of the further penalty of *tushheer*.

2. In reply, I am desired to communicate to you the opinion of the Court, that under the circumstances stated, the additional penalty of *tushheer* cannot legally be awarded against the prisoner; that mode of punishment not being mentioned in the regulation above cited.

3 You will be pleased to inform your fourth judge accordingly, directing him at the same time to make the necessary alteration in the sentence.

December 26, 1823.

No. 361.

To the Calcutta Court of Circuit, dated the 26th March, 1824.

¹⁸¹⁷
Reg XVII Sec 11. The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 20th instant, submitting copies of certain proceedings held in the case of Ramdhun Mokerjea and Muddun Chatterjea, and requesting the opinion of the Court, as to whether, under the circumstances therein mentioned, the magistrate of Burdwan was authorized in refusing to release the said prisoners, when directed to do so by your third judge.

2. In reply I am desired to communicate to you the opinion of the Court, that your third judge was fully competent to order the immediate release of the prisoners, as they had been acquitted of uttering the forged note, knowing it to be forged; and the having a forged bank note in possession, (which appears to be the plea assigned by the magistrate for the detention of the individuals in question,) is not declared to be a punishable offence by Regulation XVII. 1807, or any other regulation in force.

3. The Court direct, therefore, that you order the immediate release of the said prisoners, communicating the above remarks to the magistrate for his information and future guidance.

March 26, 1824.

No. 362.

To the Calcutta Court of Circuit, dated the 26th March, 1824.

^{1817.}
Reg. XVII. Sec. 11. The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 20th instant, submitting copies of certain proceedings held in the case of a prisoner named Pearcee Osar, who was tried and acquitted by him at the late Burdwan sessions, on a charge of uttering counterfeit coin with an intent to defraud the prosecutor; and requesting the opinion of the Court, as to whether a magistrate, having committed a prisoner for trial for a specific offence, is authorized, after the acquittal of that prisoner by the court of circuit, to revise the proceedings and to punish him for a minor offence; the magistrate having, in the instance referred to, sentenced the prisoner to a fine for having counterfeit coin in his possession, and having detained the prisoner in confinement, under such sentence, in pursuance of Section 11, Regulation XVII. 1817.

2. In reply, I am directed by the Court to inform you, that supposing the trial before the court of circuit to have included an investigation of the point expressly provided for in the section above mentioned, viz. the prisoner having counterfeit coin in his possession, and not shewing good and sufficient cause for the same, (which the Court of Nizamut

Adawlut conclude must have formed part of the trial on the charge of uttering such counterfeit coin with an intent to defraud,) the magistrate was not, in the judgment of the Nizamut Adawlut, warranted by the regulation above mentioned in sentencing the prisoner to a fine on the proceedings held before his commitment, and detaining him in confinement under such sentence, after he had been acquitted by the court of circuit, and a warrant had been issued for his release.

3. You will be pleased therefore to order the magistrate of Burdwan to release the prisoner Pearcee Osar without delay, and to communicate to him the foregoing remarks for his information and future guidance.

March 26, 1824.

To the Patna Court of Appeal, dated the 9th April, 1824.

The Court of Sudder Dewanny Adawlut have had before them your letter, under date the 1st instant, requesting the Court's opinion as to the proper mode of disposing of two special appeals, regarding which your first and second judges differ, and in the trial of which your third and fourth judges are incapacitated from sitting, they having formerly decided the cases in their respective capacities of judge and register of zillah Tirhoot.

2. In reply, I am directed to acquaint you, that the casting voice conferred by Section 2, Regulation XLVII. 1793, having been taken away by Section 9, Regulation XXV. 1814, and no new rule enacted by which to give the senior judge a casting voice, it is essential, that he should concur with some one of the other judges. The decision in both cases must necessarily be postponed, until some other judge joins your court.

3. The same course, the Court observe, must be adopted in the case to which you allude, in the second paragraph of your letter, viz. supposing all the four judges of your court to be of different opinions.

April 9, 1824.

To the Judge and Magistrate of Southern Division of Bundelcund, dated the 23rd April, 1824.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 4th instant, requesting to be informed, whether the provisions of Section 39, Regulation XXVII. 1803, which relate to cases of a collector's omission or refusal to obey an order or decree of a court of judicature, were meant to extend to proceedings issued from the magistrate's court.

2. In reply, I am desired to communicate to you the opinion of the Court, that the rule above quoted, considered with its context and the general provisions of the regulation referred to, was intended to be restricted in its operation to decrees and orders of a civil court of judicature; and that it is not applicable to the proceedings of a magistrate.*

April 23, 1824.

No. 363.

1793
Reg. XLVII.
Sec. 2.
1814.
Reg. XXV. Sec. 9

No. 364.

1803.
Reg. XXVII.
Sec. 39.

* This principle was recognized also in a letter to the acting judge of Moradabad, dated the 17th of March, 1826, No. 414, page 174, par. 3.

No. 365.

To the several Courts of Circuit, in the Western and Lower Provinces, dated the 7th May, 1824.

1817.
Reg XVII Sec 8
Cl. 4

I am directed by the Court of Nizamut Adawlut to transmit for your information and future guidance, an extract (paragraph 6) from the resolutions of the Court of this date, relative to the crime of administering poisonous drugs to persons, with a view to robbing them when in a state of insensibility.

2. I am further directed by the Court to observe, that under their construction of the fourth clause of Section 8, Regulation XVII. 1817, as applicable to such cases, it will be necessary to refer, for the final sentence of the Nizamut Adawlut, all trials in which the prisoner may be convicted of the offence in question, whether death may ensue or otherwise.

Extract from the Remarks and Orders of the Court of Nizamut Adawlut, under date the 7th May, 1824, on the Chief Secretary to Government's letter of the 6th November last, forwarding the Report of the Superintendent of Police in the Western Provinces, for the year 1822, and the resolutions of Government thereon.

PAR. 6. The Court regret to observe, that the crime of administering poisonous drugs to travellers and other persons, with the view of robbing them when in a state of insensibility, appears to be increasing both in the lower and western provinces. They do not, however, consider that any further enactment is necessary for the punishment of persons guilty of this atrocious crime; as in the event of death ensuing, the offender would on conviction be liable to the punishment of wilful murder; and when death may not ensue, as life is endangered by administering poisonous drugs, in order to cause insensibility, such cases appear to come within the provisions of the fourth clause of Section 8, Regulation XVII. 1817, relative to cases of robbery and theft, or the attempt to commit such, when accompanied with an attempt to commit murder, or with corporal injury in such degree as to endanger life. In all such cases the trial is referrible to the Nizamut Adawlut, and the offenders who may be convicted to the satisfaction of this Court, are liable to a sentence of 39 lashes with a *corah* and imprisonment and transportation for life.

May 7, 1824.

No. 366.

1824.
Reg IV.

To the Judge of Zillah Bhaugulpore, dated the 25th June, 1824.

I am directed by the Court of Sudder Dewanny Adawlut, to acknowledge the receipt of your letter of the 14th instant, and its enclosures, requesting to know whether Mr. W. B. Jackson, the officiating 2nd register of your court, is authorized to register deeds while officiating as collector of the district, or whether he must be re-appointed to act in that capacity, under the provisions of Regulation IV. 1824.

2. As Mr. Jackson has been already appointed to officiate as register of deeds, the Court do not think it necessary that you should re-appoint him to officiate in the capacity, whilst acting as collector, under the regulation above-mentioned.

June 25, 1824.

To the Judge of Zillah Moradabad, dated the 2nd July, 1824.

I am directed by the Court of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter of the 11th ultimo, requesting the Court's opinion, as to whether the civil court is competent to receive a suit for actual costs against a plaintiff whose complaint had been dismissed in a criminal court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the civil courts are not authorized to take cognizance of such suits, as clause 3, Section 29, Regulation VII. 1803, authorizes the criminal courts to adjudge a reimbursement of costs actually incurred upon a prosecution before them by either of the parties thereto, if they shall consider such reimbursement just and equitable.

3. The Court however are of opinion, that if a magistrate, from oversight, have omitted to order a reimbursement of costs to the party whom he may think justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application from the party for that purpose.

July 2, 1824.

To the Judge of Zillah Allahabad, dated the 2nd September, 1824.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting to know whether it is allowable, during the vacation, to take cognizance in the *dewanny* Court of cases transferred from the *foujdaree* under Regulation VI. 1813.

2. In reply, I am directed by the Court to inform you, that you cannot take up the cases in question under the regulations as they at present stand. A regulation has however been passed, and will speedily be published, for enabling the magistrates to take summary cognizance of cases of forcible dispossession from or disturbance in the possession of land or other property, subject to a regular suit in the civil court.*

September 2, 1824.

Extract from a letter to the Bareilly Court of Appeal, dated the 21st September, 1824.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from your senior judge, dated 21st ultimo, in reply to my letter of the 23rd July last, regarding his rejection of a petition of appeal, without first having called on the petitioner to shew cause why he did not furnish security for costs; and also containing his observations regarding the cases of Zorawur Singh.

No. 367.

¹⁸⁰³
Reg. VII. Sec. 39
Cl. 3.

No. 368.

¹⁸¹³
Reg. VI. 1

No. 369.

¹⁸⁰³
Reg. IV Sec. 12,
Cl. 6.

* This Regulation was subsequently enacted as Regulation XV. of 1824.

2. With regard to the question submitted by your senior judge, "whether, under the sixth clause of Section 12, Regulation IV. of 1803, a superior court is bound to receive a petition of appeal from the decision of an inferior court in any regular suit, "when the petitioner, though not a pauper, omits to file along with it security for the "costs of other party," the Court are of opinion that although no appeal can be admitted before the security for costs be filed; yet the superior Courts are competent, (and such is the practice of this Court,) provided good and sufficient reason be shewn why the security was not filed with the petition, to receive the petition, and to allow the petitioner sufficient time to furnish the security; which course of proceeding appears to have been adopted by your late fourth judge in the cause of Mukundram.

September 21, 1824.

No. 370.
1806
Reg XVII.

Extract from a letter to the Judge of Zillah Furuckabad, dated the 21st September, 1824.

3. The Court observe, that the spirit and intention of Regulation XVII. of 1806, appear applicable to every description of real property, as well as to landed estates.

September 21, 1824.

No. 371.
1824.
Reg. XV Sec 3.
1814
Reg XXVII.
Sec. 17.

To the Magistrate of Zillah Allahabad, dated the 26th November, 1824.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, requesting the Court's opinion on certain questions connected with the provisions of Section 3, Regulation XV. 1824.

2. In reply, I am directed to communicate to you the opinion of the Court, that the term "vakeel," made use of in the section above quoted, should not be construed to mean only the authorized pleaders attached to the civil courts of judicature, (who, however, may act, under the provisions of Section 17, Regulation XXVII. 1814,) but that it should be held to extend to all agents of the parties duly appointed to act as their vakeels; and that in every case, whatever persons may be so employed, the amount of their fees should be adjusted between them and their constituents, as in other *fouzdaree* cases.

November 26, 1824.

No. 372.
1806.
Reg. II. Sec. 11.

To the several Provincial, Zillah, and City Courts, &c., dated the 31st December, 1824.

Doubts having been entertained whether the provisions for the relief of insolvent debtors, contained in Regulation II. 1806, should be considered applicable to the cases of persons in confinement for arrears of rent, I am desired to acquaint you, that, in the opinion of the Court, the rules contained in Section 11, Regulation II. 1806, extend to all persons in confinement under decrees, regular or summary, of the civil courts; but not to

those in confinement under any process in cases wherein the decree of a civil court has not been passed.

2. You are accordingly desired to adopt this construction in future, whatever construction may have been heretofore given in your court to the section in question.

December 31, 1824.

To the Acting Magistrate of Zillah Beerbohm, dated the 21st January, 1825.

No. 373.
1797
Reg. XIV. Sec 8

The Court of Nizamut Adawlut have had before them your letter, dated the 11th instant, requesting to be informed, how the costs in criminal cases, alluded to in Section 8, Regulation XIV. 1797, are to be levied.

2. In reply, I am desired to acquaint you that in no case, wherein the Government is not one of the parties, can reimbursement of the costs be made from the treasury of the court; but that they should be levied from the failing party, in like manner as costs adjudged in civil suits.

January 21, 1825.

To the Officiating Magistrate of Cuttack, dated the 21st January, 1825.

No. 374.
1818
Reg XII Sec 2,
Cl. 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 13th instant, requesting to be informed if it is considered that an individual convicted of burglary, being *chokeedar* of a different village from that in which the burglary is committed, should make no change in the order of the magistrate for commitment.

2. In reply, I am desired to communicate to you the opinion of the Court, that although the fact of the property stolen being under the special protection of the thief, is unquestionably an additional aggravation, yet under the terms used in clause 2, Section 2, Regulation XII. 1818, any person charged with having committed the offence of burglary, while employed in the office of watchman, guard, or police officer, and against whom there may appear to be sufficient evidence, must be committed to take his trial before the court of circuit.

January 21, 1825.

To the Dacca Court of Appeal, dated the 4th February, 1825.

No. 375.
1806
Reg II Sec. 3.
1793
Reg IV. Sec. 11.

The Court of Sudder Dewanny Adawlut have had before them a letter from the officiating judge of *zillah* Sylhet, dated the 17th ultimo, forwarding a copy of his correspondence with your court, relative to the practice of defendants in regular civil suits filing their answers, at any stage of the proceedings antecedent to final decisions.

2. On the subject of that reference, I am desired to acquaint you, that the Court are not prepared to adopt to its full extent the principle laid down in your letter to the address of Mr. Turquand, dated the 13th ultimo, namely, that "a defendant in a regular civil suit is entitled to file his answer to the plaint at any stage of the trial antecedent to final decision, although the enquiry may have been commenced *ex parte*." On the contrary, under a strict construction of the rule contained in Section 3, Regulation II. 1806, the cause should be proceeded on *ex parte*, notwithstanding the defendant's subsequent

appearance, if he do not appear, either in person or by *rakeel*, within the time limited in the proclamation prescribed by Section 11, Regulation IV. 1793.

3. The Court however are of opinion, that consistently with the spirit of the rule above quoted, whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex parte* investigation; and to adduce evidence in support of it, if the merits of the case appear to require it.

4. You will be pleased to forward a copy of this letter to the officiating judge of Sylhet, for his information and future guidance.

February 4, 1825.

No. 376.

1814
Reg. XXVI.
Sec. 12, Cl. 3.

To the Judge of Zillah Meerut, dated the 8th April, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter of the 9th ultimo, suggesting the expediency of the fines levied in cash under the third clause of Section 12, Regulation XXVI. of 1814, being paid into the court, by the persons fined presenting a petition on stamp paper equal to the amount of the fine.

2. I am directed by the Court to inform you, that they are not aware of any necessity for the adoption of the measure proposed by you, as a little precaution would, they conceive, be sufficient to prevent irregularity or fraud in crediting the fine referred to, and your proposition could not be adopted without a new regulation; which, however, you are at liberty to propose in the prescribed form, if you think it expedient.

April 8, 1825.

No. 377.

1812
Reg. IV.

To the Agent to the Governor General, Moorshedabad, dated the 8th April, 1825.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of a letter from you, under date the 31st ultimo, requesting to know if a suit can be instituted in the manner prescribed by Regulation IV. 1812, in favour of His Highness the Nuwab Nizam.

2. In reply, I am directed to inform you, that under the provisions of the regulation adverted to, the solution of your question depends upon whether Government consider His Highness the Nizam in the light of a sovereign prince or not, and that you should therefore apply direct to Government for information on that point.

April 8, 1825.

No. 378.

1824
Reg. XV. Sec. 5.

To the Magistrate of Zillah Rungpore, dated the 8th April, 1825.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, with regard to Section 5, Regulation XV. of 1824; there being no rule laid down for the guidance of magistrates, in the event of the crops sown by the illegal possessor being uncut.

2. In reply, I am directed by the Court to inform you, that the provisions of the regulation adverted to, which prohibit a magistrate to award damages for loss of crops, or injuries sustained from dispossession, do not preclude him from restoring a party wrong-

fully dispossessed, to the possession of land with the crop upon it, although the latter may have been sown by the wrongful dispossessor, as in the case stated by you. The Court however do not exactly understand the object of your reference, and therefore direct me to add, that if you require a more specific opinion, you should state the case more circumstantially for their information.

April 8, 1825.

Extract from a letter to the Benares Court of Circuit, dated the 8th April, 1825.

PAR. 3. With reference to the sentence passed on Sheodeen, *alias* Neerunjun, (No. 38 of the statement,) who was punished for burglary and theft by your third judge, the Court observe that there were other individuals implicated in the same case, whose offence was taken final cognizance of by the magistrate, when he committed the prisoner above-named to take his trial before the court of circuit on the ground of his having been convicted of a former robbery.

4. This course of proceeding, the Court remark, is at variance with the spirit of the rule contained in clause 2, Section 2, Regulation XII. 1818, and is otherwise objectionable, as involving the possible consequence of conflicting judgments being passed by different tribunals in one and the same case.

5. You are requested therefore to instruct the magistrate of Goruckpore to commit in future the whole of the offenders implicated in the same case to take their trial before the court of circuit, whenever the commitment of any one of the number may be requisite under the regulations.

April 8, 1825.

To the Judge of Zillah Tirhoot, dated the 15th April, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting the opinion of the Court, as to whether the explanation of Section 15, Regulation VII. 1799, as given in the latter sections of Regulation VIII. 1819, extends beyond Bengal; and whether a written engagement is necessary to enable a person to sue under Regulation VII. 1799.

2. In reply to your first query, I am desired to refer you to Section 22, Regulation VII. 1822, by which Sections 18 and 19, Regulation VIII. 1819, are extended to all the provinces immediately subject to the presidency of Fort William.

3. In reply to your second query, I am directed to state, that the Court do not hold the existence of a *caboolat*, or written engagement on the part of the *ryot*, to be essentially required to enable the landholder to institute a summary suit against him under Regulation VII. of 1799; but that, on the contrary, the courts are competent to decree such arrears as may be proved to be *bond-fide* and equitably due by an examination of the vouchers and accounts of the parties, as prescribed by clause 4, Section 15, Regulation VII. 1799.

April 15, 1825.

No. 379.
1818
Reg XII Sec 2,
Cl 2

No. 380.
1819.
Reg VIII.
Secs 18 and 19
1799
Reg. VII Sec. 15,
Cl 4.

No. 381.

*To the Magistrate of Southern Division of Bundlecund, dated the 22nd April, 1825.*1817.
Reg. XX. Sec. 16,
Cl. 17.

The Court of Nizamut Adawlut have had before them your letter, under date the 8th instant, requesting to be informed whether the provisions of clause 17, Section 16, Regulation XX. 1817, are applicable to the recovery by a police officer of *treasure* plundered by robbers.

2. In reply, I am desired to acquaint you, that the provisions of the rule above quoted are applicable to the cases of police officers who may recover treasure; but that its operation does not extend to other individuals not being police officers. Commission cannot be awarded to such persons to be deducted from the property recovered, although they may of course receive a reward for any eminent service rendered to the police; the necessary sanction for such reward having been previously obtained by the magistrate from the proper authority.

April 22, 1825.

No. 382.

*To the Acting Magistrate of Zillah Rajeshahye, dated the 22nd April, 1825.*1799
Reg. VII Sec 15,
Cl 8
1807
Reg. IX. Sec. 23.

The Court of Nizamut Adawlut have had before them your letter, dated the 1st instant, stating a difference of opinion between yourself and the collector, as to the construction of clause 8, Section 15, Regulation VII. 1799, and as to the degree of power which a landholder possesses, under that section, in compelling a *ryot's* attendance.

2. The Court have also received from the Board of Revenue a copy of the correspondence consequent upon, and a detail of the circumstances which gave rise to, the difference of opinion above alluded to, which were submitted for the consideration of that authority by Mr. Pringle.

3. In reply to your communication, I am desired to observe, that it is extremely difficult for the Court to define exactly and generally what degree of power it was intended by the use of the term "compulsion" in the regulation to confer on the landholders, in enforcing the attendance of their tenants. In the event of a complaint being preferred to you of the abuse of that power, you will decide from the evidence whether any unnecessary and unauthorized degree of severity has been exercised or not; and your decision, whatever it may be, will be open, as in other cases, to revision by the court of circuit under Section 23, Regulation IX. 1807.

Regarding the prohibition against the issue of general proclamations.

4. I am further directed to acquaint you, that the Court deem the proclamation issued by you, and bearing date the 15th of January last, to be extremely injudicious, and they desire that you will recall it immediately on the receipt of this letter.

5. For your future guidance, I am desired to call your attention to the Court's circular letter, under date the 16th of August, 1822, prescribing the line of conduct to be pursued by the several magistrates on the occasion of their deeming it necessary to issue a proclamation on any subject.

April 22, 1825.

No. 383.

*To the Dacca Court of Circuit, dated the 29th April, 1825.*1814
Reg. XXV. Sec. 12,
Cl. 2.

The Court of Nizamut Adawlut have had before them a letter from your fourth judge, dated the 16th instant, submitting for the decision of this Court a difference of opinion

between himself and the acting magistrate of Sylhet, together with a copy of the proceedings out of which it originated.

2. In reply, I am desired to communicate to you, for the information and guidance of your fourth judge, the opinion of the Court, that a single judge of circuit, under the existing regulations, is not competent to suspend the execution of a magistrate's sentence, until the court of circuit collectively record their judgment.

April 29, 1825.

To the Acting Magistrate of Zillah Sylhet, dated the 29th April, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 16th instant, requesting to be informed, whether the second punishment directed by Section 5, Regulation VII. 1819, in cases of workmen neglecting to finish their work, should be considered final and conclusive, or whether the magistrate is at liberty to repeat such punishment until the work is performed.

2. In reply, I am desired to communicate to you the opinion of the Court, that the sentence of two months' imprisonment, prescribed in the section above quoted, is intended as a punishment for wilful neglect to perform work undertaken, and not as a means of compelling the performance of it; consequently that the magistrates are not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling an actual performance of the work engaged for.

April 29, 1825.

To the Magistrate of Zillah Jessore, dated the 29th April, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 20th instant, requesting to know whether, in case of a ryot entering into an engagement with an indigo planter for cultivation of a particular spot of ground, and afterwards wishing to evade the fulfilment of that engagement, the planter is justified by Regulation VI. of 1823, in compelling the ryot to fulfil his contract? or is he (the planter) to prosecute him for the penalty which is specified in the *caboolat*?

2. In reply, I am desired to communicate to you the opinion of the Court, that an indigo planter, under the circumstances above stated, is not competent to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryot to fulfil his contract. His only legal remedy in such case is that prescribed by Section 5, Regulation VI. 1823, to the provisions of which I am desired to refer you.

April 29, 1825.

To the Judge of the Southern Division of Zillah Bundlecund, dated the 27th May, 1825.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 3rd instant, soliciting the opinion of the Court, as to whether it is intended that stamp paper should be used in causes tried by the zillah courts, under Section 23, Regulation XXVII. of 1803; and if so, whether the courts are to be guided, in the value of the stamp paper, by the amount of the arrears of revenue due by the defaulter,

No. 384.

1819.
Reg. VII. Sec 5

No. 385.

1823
Reg. VI. Sec 5

No. 386.

1803
Reg. XXVII,
Sec. 23.

or by the amount of the annual produce of the estate, for the confiscation of which the collector sues.

2. In reply, I am desired to communicate to you the opinion of the Court, that in the cases in question stamps should be used; the value of which should be calculated according to the amount of the annual *jumma* of the estate, for the confiscation of which the collector sues.

May 27, 1825.

No. 387.

To the Bareilly Court of Circuit, dated the 27th May, 1825.

Power of a single judge of circuit to fine the treasurer of a magistrate's court without reference to the magistrate.
The Court of Nizamut Adawlut have had before them a letter from your officiating judge, Mr. Cracroft, dated the 8th instant, annexing a copy of his correspondence with the magistrate of Agra, and requesting the opinion of the Court, as to whether or not he was competent to fine the treasurer of the magistrate's court, without reference to that officer.

2. In reply, I am desired to acquaint you, that the Court are of opinion, that Mr. Cracroft was not competent to proceed to this measure of his own authority, and that he should have referred the case, in the first instance, to the magistrate for decision; reserving to himself the power of bringing the case under the cognizance of his colleagues for correction, in the event of his seeing reason to be dissatisfied with the mode in which the magistrate had disposed of it.

3. You will be pleased to furnish the magistrate of Agra and your officiating judge with copies of this letter, for their information and guidance.

May 27, 1825.

No. 388.

To the Joint Magistrate of Noacolly, dated the 3rd June, 1825.

Reg I Sec. 12. 1824.
Reg. XIV Sec 3. 1797
Reg. IX. Sec. 19. 1807.
The Court of Nizamut Adawlut have had before them your letter, dated the 26th ultimo, requesting to know what process should be observed for the realization of the fine, under Section 12, Regulation I. 1824, on persons illicitly cultivating salt *churs*.

2. In reply, I am desired to acquaint you, that the regulation above quoted being silent as to the mode in which the fine is to be levied; the Court are of opinion, that it should be commuted to imprisonment under the rule contained in Section 3, Regulation XIV. 1797, and Section 19, Regulation IX. 1807, whenever the party on whom the fine may be imposed shall neglect to pay it.

June 3, 1825.

No. 389.

To the Magistrate of Zillah Rungpore, dated the 3rd June, 1825.

Reg. X. Sec 5. 1793.
The Court of Nizamut Adawlut have had before them your letter, dated the 19th ultimo, requesting the opinion of the Court on the following points:

1st. On a person being charged with heinous offences, such as are only punishable by the circuit judge, and the fact established by two or more witnesses; is it the duty of a magistrate to make over the accused for trial before the circuit judge, without further investigation, or ought he to hear witnesses for the defence?

2nd. If witnesses for the defence be summoned, and prove an *alibi*, is the magistrate at liberty to acquit the accused, when by the evidence for the prosecution he is proved guilty ?

2. In reply, I am desired to acquaint you, that in the cases subject to the jurisdiction of the court of circuit alone, a magistrate is not at liberty to enter into any evidence for the defence ; that being within the province of the court of circuit exclusively.*

June 3, 1825.

Extract from a letter to the Benares Court of Circuit, dated the 10th June, 1825.

The Court of Nizamut Adawlut have had before them a letter from your third judge, under date the 14th ultimo, submitting the original proceedings, and copies of the English correspondence of your court, and of the magistrate of Ghazeepore, in the case of a person named Dhujoo Singh, who is detained in jail under a requisition to furnish security.

2. The Court observe, that Mr. Rattray has submitted four questions for the decision of the Court; namely,

1st. Whether a person sentenced to imprisonment by a magistrate, in failure of furnishing a specific security required by that magistrate, has an appeal to the *sudder* court of the province collectively ? or whether he must remain in jail till a single member of the same court, perhaps half a year or more afterwards, visits the station, and determines that he shall remain there : or that, in justice, he never should have been, where he has been, under an unwarrantable detention, so long without redress ?

2dly. Whether a petition presented at the *sudder* court of the province, and admitted by two judges of that court, whose orders are passed and recorded upon it, each in conformity with the other, should not be considered, as far as the authority of the court extends, as finally disposed of ?

3dly. If the magistrate protests against a compliance with these orders, and desires it, a reference to the Nizamut Adawlut may follow, unless the two judges, whose orders he disputes, revise, and modify or rescind them ? but it may so happen, that one of these two judges is then no longer a member of the court; in that case, is the other, *of himself* competent to revise his own, and his late colleague's proceedings, and confirm or cancel both, on his own sole opinion ? or in the event of a revisal becoming necessary (by a protest from the executive authority, as in the present instance), should not another member of the court take the place of the departed one, and decide the point which, had the latter been present, he would have aided in determining ?

4thly. Is a single judge on circuit competent to interfere with an order passed antecedently at the *sudder* station by two members of his own court, himself being one of the two ? or would the magistrate be justified in obeying the order issued by him singly, which he [the magistrate] had already protested against when issued by him conjointly with another equal authority ?

No. 390.

1796
Reg X.
1818
Reg VIII.

* Superseded by the provisions of Regulation VIII. 1829.

3. In reply to the first question, I am desired to communicate to you the opinion of the Court, that, under the existing regulations, a person sentenced to imprisonment by a magistrate, in failure of furnishing specific security required by the magistrate, has not an appeal to the *sudder* court of the province collectively, and that the cognizance of his case rests solely with the individual judges of circuit who may visit the station at which he is confined.

4. In reply to the second question, the Court observe, that, under the above construction of the powers of the court of circuit, a petition for a revision of a magistrate's order of security having been taken up, and orders passed upon the same by two judges at the *sudder* station, should not be considered as finally disposed of; such orders being contrary to the regulations, and null and void.

5. On the third question, I am directed to state, that a magistrate is of course competent, under Regulation X. 1796, to require a reference to this Court, in any case wherein he may deem an order passed by you (whether individually or collectively) to be repugnant to the regulations; and that generally speaking, where it may become necessary to repeat an order passed by two judges, of whom one had departed since the order was passed originally, and where two voices are requisite, the remaining judge should be joined by one of his colleagues; but that at the same time, the other members of the court are clearly at liberty to abstain from passing any order on, or interfering in any manner with a case, where they may be of opinion, that the cognizance of it was erroneously assumed by one or more of their colleagues.

6. It is only necessary in answer to the fourth question to state, that any single judge of circuit, having concurred in passing an illegal order, is not thereby incapacitated from passing a subsequent order in every respect conformable to the regulations, and in opposition to the former one, which was never carried into effect by reason of the magistrate's objection on the score of its illegality, and the order for the execution of which was never repeated.

7. The Court desire me to request, that, in communicating their opinion to your third judge on the above points, you will also acquaint him, that they do not deem it expedient to recommend any alteration in the rules relative to security, as suggested by him in the concluding paragraph of his letter.

9. The original proceedings in the case of Dhujjoo Singh are herewith returned, and the Court desire, that Mr. Rattray, who appears to have taken up the case as a judge of circuit at the *zillah* station, will immediately pass such order thereon as may to him appear just, and at the same time be within his competence under Regulation VIII. 1818.*

June 10, 1825. †

* This construction has been superseded by a subsequent one of the 31st of August, 1827, No. 458, page 193, at least so much of it as regards an appeal by a security prisoner to the judges at the *sudder* station.

To the Benares Court of Circuit, dated the 10th June, 1825.

The Court of Nizamut Adawlut have had before them a letter from your officiating judge, dated the 17th ultimo, submitting the copy of a correspondence which has passed between himself and the acting magistrate of Goruckpore, on a difference of opinion subsisting between them, together with the original proceedings out of which that difference arose.

2. In reply, I am desired to acquaint you, that the points at issue between them, as stated by the acting magistrate, do not appear to be exactly the same as those stated by your officiating judge. By the latter officer they are stated as follows :

3. *First.* Whether in a case of theft by a servant of his master's property, the amount or value of which may be above 50, but not exceed 300, Rupees, and unattended with personal violence or other circumstance of aggravation, such as to bring the case within the first clause of Section 3, Regulation XII. 1818, the magistrate be *competent* to pass a final sentence to the extent of the powers vested in him by clause 4 of the same section.

Secondly. Supposing the magistrate to be so competent, whether he is bound to dispose of the case ; or if he deem it proper to commit the accused for trial before the court of circuit, under the discretion given in the last mentioned clause, whether it is not incumbent on him to state the special grounds on which he exercises such discretion, and which induce him to think the accused deserving a more severe punishment than he is declared competent to adjudge.

Thirdly. Supposing the judge of circuit holding the session to be of opinion, that the case is within the magistrate's competency, and no special grounds are assigned in the *roobukaree* of commitment, or shown on the proceedings to justify the commitment, or induce the inference that the magistrate considers the punishment which he can award insufficient, whether, under such circumstances, the judge of circuit is competent to return the proceedings without trial, and to instruct the magistrate to dispose of the case.

4. On the first question as above put, the Court are of opinion, that a magistrate is competent under the circumstances stated to punish an offender on his own authority, to the extent specified in clause 4 of the section quoted.

5. On the second question, that a magistrate is not bound to dispose of a case under such circumstances, but that he may commit the offenders to take their trial before the court of circuit, under the second clause of the section quoted, should *any* peculiar circumstances in the case induce him to consider this course of proceeding preferable ; and that it is incumbent on a magistrate to state in his *roobukaree* of commitment, the circumstance which induced him to commit the case, in conformity to the instructions contained in the 3d paragraph of the court's circular order, dated the 1st September, 1820.

6. On the third question, that a judge of circuit is not competent, under the circumstances therein stated, to return the proceedings without trial, and to instruct the magistrate to dispose of the case ; but that he should call upon the magistrate to supply the omission, and in the event of insufficient ground for commitment being shewn, he should, nevertheless, proceed to decide the case, contenting himself with recording, in his final proceeding or otherwise, a caution to the magistrate against making unnecessary

No. 391.
1818.
Reg. XII. Sec. 3

commitments in future, and not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case.

7. The Court observe, that the questions of the magistrate merely went as to his own competency to commit, and the judge of circuit's competency to return without trial, a case under the circumstances above detailed, and these points have been already replied to.

8. You will be pleased to furnish your officiating judge, and the acting magistrate of Goruckpore, with copies of this letter, for their information and future guidance.

June 10, 1825.

No. 392.

1810
Reg. XX.
Secs. 15, 16, and 17.

To the Acting Magistrate of Zillah Ghazepore, dated the 10th June, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 31st ultimo, requesting the Court's opinion on the following queries :

1. In the event of a boat fastened to a spot of ground within the limits of a cantonment being attacked and robbed, which boat at the time was not aground, but floating, and the depredators coming from the cantonment lands, is the case cognizable by the civil magistrate, or by the military authorities ?

2nd. If a boat fastened with ropes, chains, &c. to a spot of land within the limits of a cantonment, but floating, be attacked from the river side by boats or by wading, &c. is the case cognizable by the civil or military authorities ?

3rd. If a boat, when tracking up the river, and its dandies within the limits of cantonment, and pulling on the "goon," (or tracking rope,) should be attacked, and the goon or tracking rope cut by persons within the limits of a cantonment, and injury sustained, is the case cognizable by civil or military authorities ?

2. In reply, I am desired to refer you to the rules contained in the 15th, 16th, and 17th Sections of Regulation XX. 1810, by which you will perceive, that the military authority extends only to cases of petty offences committed within the limits of a cantonment by a person being a retainer of the army, or the servant of an officer, or registered as attached to the bazar ; and the more grave offences, such as those mentioned in your queries, are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether committed within or without the limits of a cantonment.

June 10, 1825.

No. 393.

1824
Reg. XV. Sec. 5.

Extract from a letter to the Patna Court of Circuit, dated the 17th June, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 31st ultimo, submitting in compliance with request of the magistrate of zillah Behar, for the consideration and orders of this Court, under Section 2, Regulation X. 1796, the proceedings in the case of Ramadheen Singh *versus* Bodhee and others.

2. In reply, I am desired to communicate to you the opinion of the Court, that the magistrate clearly exceeded his powers in awarding possession to a purchaser of mortgaged property to the exclusion of the mortgagee, under the provisions of Regulation XV. of

1824, on the plea that the mortgage had been redeemed, although the purchaser, up to the date of the dispute which led to the summary award, had never been in possession.

3. The Court therefore entirely concur with you in opinion, that the regulation above quoted did not apply to the case, which was properly cognizable in your court on appeal on the ground of irrelevancy.

5. In conclusion, I am directed to observe, that Section 5, Regulation XV. 1824, expressly prohibits summary awards of damages in cases tried under that regulation, but that, on this point you should submit the draft of a modifying enactment, in the event of your considering the rule in question objectionable.

June 17, 1825.

To the Magistrate of Zillah Rungpore, dated the 17th June, 1825.

No. 394.

1799
Reg. VII Sec. 15,
Cl. 8.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th instant, requesting to be informed, whether indigo planters have the power of summoning and compelling the attendance of *ryots*, as the *zemindars* and other landholders have, under clause 8, Section 15, Regulation VII. 1799.

2. In reply, I am desired to communicate to you the opinion of the Court, that indigo planters, not being *zemindars* or landholders, have no power to summon *ryots* and compel their attendance.

June 17, 1825.

To the Benares Court of Appeal, dated the 24th June, 1825.

No. 395.

1793
Reg XVI. Sec. 5.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting their opinion as to the necessity or otherwise of the whole, or a majority merely, of the members associated in cases referred to arbitration coinciding in the decision returned by them; and stating the difficulty which occurs in many cases before your court, where no umpire has been named, and the arbitrators are divided among themselves.

2. In reply, I am desired to acquaint you, that whenever a suit shall be submitted to arbitration, the court in which it may have been instituted is required, previous to the arbitrator or arbitrators entering upon the arbitration, to cause the parties to agree to some one of the provisions detailed in Section 5, Regulation XVI. 1793, for completing the award, in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause; and that, where these preliminary engagements may not have been specified in the bond and the arbitrators may not be unanimous in their decision, their proceedings must of course be considered void and of no effect, and the case must be tried *de novo*; but I am desired to observe, that no difficulty can occur where the precautionary measures prescribed by the regulation, as to the conditions of the bond, have been duly executed.

June 24, 1825.

No. 396.

1824

Reg. XV.

To the Magistrate of the City of Patna, dated the 22nd July, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, submitting your observations on the mode of investigating cases instituted under the provisions of Regulation XV. 1824, and enclosing a copy of a form used by you in taking the depositions of the parties in such cases.

2. In reply, I am desired to acquaint you, that the Court are by no means satisfied of the utility of the form in question, or of the expediency of instituting a formal and separate preliminary investigation to determine the question of relevancy, as recommended by you; being of opinion, that the point of relevancy or otherwise is best established by the evidence adduced to prove the complaint of dispossession, and that it is competent to every judicial authority, (whether the jurisdiction be original or appellate,) to be guided by such means of forming a judgment on this point as may be deemed by them most satisfactory.

July 22, 1825.

No. 397.

1803.

Reg. XIX. Sec. 3.

To the Bareilly Courts of Appeal and Circuit, dated the 29th July, 1825.

The Courts of Sudder Dewanny Adawlut and Nizamut Adawlut have had before them your letter, dated the 7th instant, with its enclosure from the judge and magistrate of Bareilly, requesting the opinion of the Court as to whether a person named Dubois, who was born at Chandernagore of European parents, should be considered an European, and consequently subject to the prohibition contained in Section 3, Regulation XIX. 1803.

2. In reply, I am desired to communicate to you the opinion of the Court, that the parents of the individual above-named having been Europeans, the place of his birth is immaterial; and that he should therefore be considered an European.

July 29, 1825.

No. 398.

1800.

Reg. I. Sec. 1.

To the Acting Judge of Zillah Sylhet, dated the 5th August, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting to be informed, whether a minor can execute a power of attorney to a constituted *vakeel* of the court to defend a suit instituted against the minor's father in his life time, or whether the suit must remain for investigation until the minority of the boy expires.

2. By Section 1, Regulation I. of 1800, it is provided, that whenever any objections to conferring the trust on the next of kin may exist, the judge shall nominate some other person of character and respectability to act as guardian of the minor. But in the case out of which your reference originated, it appears, that the minor has no relation whatever: under which circumstances, the Court are of opinion, that the provisions of the rule above quoted might, by analogy, be extended to his case, and that you should select some competent person to act as his guardian.

3. You will be pleased therefore to make a selection of some individual accordingly, attending to the rules laid down in Regulation I. of 1800; and the person so appointed by you will be competent to nominate a *vakeel* to conduct the defence of his ward.

August 5, 1825.

To the Commissioner of Rungpore, dated the 12th August, 1825.

The Court of Nizamut Adawlut have had before them your letter, dated the 23th ultimo, requesting the Court's opinion, in respect to the nature of the instrument which is to be considered as constituting a person *armed*, under the provisions of Section 3, Regulation III. 1825; also whether the provisions of the above regulation apply to a gang of more than two persons, but of whom less than that number may have been armed.

2. In reply to your first question, I am desired to communicate to you the opinion of the Court, that clubs and sharpened bamboos should be considered as arms, within the meaning of the regulation; and, in reply to your second question, that under the provision above quoted, the case is necessarily referrible to the Nizamut Adawlut, where the gang is proved to have consisted of two or more persons, any one individual of whom may have been armed.

August 12, 1825.

To the Judge of Zillah Dinagepore, dated the 12th August, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, noticing certain malpractices by the *moonsiffs* of your court, in employing *peons* to levy illegal sums on subpœnas, *et cætera*; and requesting the Court's opinion as to whether the *moonsiffs* are competent to try suits for rents of land alleged to be due, or for the value of crops, trees, and fruits.

2. On the first point, I am desired to observe, that it should be your duty to see, that in causing notices to be served, the *moonsiffs* adhere to the existing regulations, by allowing the plaintiff to serve the notice himself, or through any other person whom he may choose to employ for that purpose, and that the remuneration of persons so employed be perfectly voluntary; taking care to punish any violation of his duty in this particular on the part of a *moonsiff*.

3. You appear to be of opinion, that the employment of established *peons* in serving the notices from the *moonsiff's* *cutcherree*, and the fixing certain rates of allowance to be received by such *peons*, would be desirable. On this point I am desired to observe, that you are at liberty, should you think the existing rules are objectionable, or that better ones can be substituted, to submit your sentiments in the draft of a regulation through the proper channel, agreeably to the provisions contained in Regulation XX. 1793.

4. On the other point, namely, the competency of the *moonsiffs* to try suit for rents of land, or for the value of crops, trees, and fruit, I am desired to call your attention to Section 4, Regulation II. 1821, the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the *moonsiffs*. With respect to suits for the other descriptions of property noticed by you, I am directed to observe, that if the suit be instituted *bona fide* for the value of crops, trees, or fruit, or other description of personal property detached from, and involving no question of right as to real property, it is cognizable by the *moonsiffs*, but not otherwise.

August 12, 1825.

No. 399.

1825
Reg. III. Sec. 3.

No. 400.

1814
Reg. XXIII.
Secs 19 and 29.
1821
Reg. II. Sec. 4.

No. 401.

¹⁸²⁰
Reg. IV.*To the Magistrate of Zillah 24-Pergunnahs, dated the 18th August, 1825.*

The Court of Nizamut Adawlut have had before them your letter of yesterday's date, submitting copies of letters which have been forwarded to you by Major General Dalzell, commanding the Presidency Division, and soliciting the instructions of the Court as to the line of conduct to be pursued by you towards a native named Gooroo Pershaud Banerjea, who, it appears, was sent to you by the Major General for the purpose of being dealt with according to law; he having refused to take the oath required of him before a court martial.

2. In reply, I am desired to communicate to you the opinion of the Court, that Regulation IV. 1820, not being applicable to the case of a witness refusing to be sworn before a court martial, and there being no other regulation that bears any relation to the subject, you should decline receiving the person sent, upon the ground that the requisition of General Dalzell cannot be regarded as a sufficient warrant for his detention.

August 18, 1825.

No. 402.

^{1825.}
Reg. XII. Sec. 4.*To the Bareilly Court of Circuit, dated the 24th August, 1825.*

I am desired by the Court of Nizamut Adawlut to forward to you the accompanying copy of a letter from the acting magistrate of Moradabad, on the subject of inflicting corporal punishment, under the provisions of Regulation XII. of 1825.

2. You are requested to inform Mr. Okeden, in reply, that he should consider the infliction of the *corah* as prohibited from the promulgation of that enactment, that is, from the date of its receipt in his office. and consequently, that in executing sentences in which the punishment of the *corah* may have been awarded, he should substitute an equal number of strokes of the ratan, the new regulation not authorising any additional number in consequence of the latter instrument of punishment having been substituted for the former.

August 24, 1825.

No. 403.

¹⁸¹⁷
Reg. XVII.
Sec 6, Cl 3.*To the Commissioner of Zillah Rungpore, dated the 24th August, 1825.*

The Court of Nizamut Adawlut have had before them your letter, dated the 2nd instant, requesting to be informed, whether it is considered proper to accept of a *razeenama* in the case of a committal for rape, the woman being married, and both she and her husband being desirous of withdrawing the complaint.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *razeenama* is not admissible in such cases, and that if the woman, on whom the violence may have been committed, and her husband refuse to prosecute, the pleader of Government should be appointed to conduct the prosecution, the offence of rape being described in clause 3, Section 6, Regulation XVII. 1817, as a heinous crime.

August 24, 1825.

To the Bareilly Court of Circuit, dated the 26th August, 1825.

No. 404.

¹⁸⁰⁷
Reg. IX. Sec. 3.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, submitting for the Court's consideration and orders, the copy of a correspondence between the magistrate of *zillah* Bareilly and the officiating magistrate of Moradabad, relative to a difference of opinion which has occurred between those officers, as to whether one magistrate can apprehend in the jurisdiction of another, any person or persons charged with criminal offences committed beyond the limits of his own jurisdiction. I am desired also to take this opportunity of acknowledging two other letters from you on the same subject, dated respectively the 2nd and 12th instant, together with their several enclosures.

2. I am desired to acquaint you, that the Court concur with you in opinion, that a magistrate has not the power of apprehending any person or persons charged with criminal offences committed beyond the limits of his own district, and not actually being or residing within the district of such apprehending magistrate at the time of a complaint being preferred.

3. You are requested to acquaint the magistrate of Bareilly, that in his letter to your address, dated the 26th ultimo, he has erred in citing the Regulations of 1793 and 1795, which are not applicable to the districts of Bareilly and Moradabad.

4. It is competent to your court to determine as to the propriety or otherwise of furnishing Mr. Okeden with a copy of Mr. Dick's letter, dated the 26th ultimo; but I am desired to add, that in the opinion of this Court there is no apparent necessity for your doing so.

5. You will be pleased to furnish those gentlemen with such parts of this communication as affect them respectively.

August 26, 1825.

To the Second Judge of the Calcutta Court of Circuit, Burdwan, dated the 5th September, 1825.

No. 405.

¹⁸²⁴
Reg. X.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, stating the particulars of a case of abortion, and requesting to be informed whether, in holding out an offer of pardon, you are restricted to one individual of the number committed in the above-mentioned case, or whether you are authorized to offer pardon to any number of persons with the view of obtaining their collective evidence on the trial; requesting also the opinion of the Court, as to what should be considered a proper interval to be given to those to whom the offer might be tendered by the magistrate, previous to their being again called up to signify their determination; and whether in the event of any of them availing themselves of it, their depositions should, in the first instance, be taken before yourself.

2. In reply to your first question, I am desired to state, that in tendering an offer of pardon, you are not restricted to one individual. In reply to your second question, that generally speaking, four and twenty hours may be considered as a proper interval to be granted to the persons to whom the offer has been tendered, before they are called on for their determination: and in reply to your third question, that the deposition of the prisoners

by whom the offer may be accepted should, in the first instance, be taken before the magistrate in the presence of those whom it may affect.

September 5, 1825.

No. 406.

1814
Reg XXVI.
Sec. 12, Cl. I.
1806.
Reg. II. Sec. 3.

To the Calcutta Court of Appeal, dated the 7th October, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 24th ultimo, submitting copies of a letter from the judge of *zillah* Burdwan, and of its enclosure from the acting register of that district, relative to a difference of opinion, which has arisen between those two officers on certain points connected with the suit of Ramdulal Bundoja, appellant, *versus* Ramdulal Mudduck, respondent.

2. The question at issue is stated by the judge as follows: Is it competent to a court to dismiss a case on default on the first hearing, after a party in it may have appeared to answer for a default, which he was called upon to do by the circular order of the Sudder Dewanny Adawlut, dated 5th November, 1812, without his being allowed the benefit of the notice prescribed in clause 1, Section 12, Regulation XXVI. 1814?

3. In reply to this question, I am desired to state, that it is clearly competent to a court to dismiss a case on default on the first hearing, after the notice prescribed by this Court's circular order, dated the 5th of November, 1812; provided, (as is stated by the acting register to have been the case in the present instance,) the defaulting party be not able to show reasonable cause for the default; and that it is not necessary in such case to issue the notice prescribed in clause 1, Section 12, Regulation XXVI. 1814; that notice, as justly remarked by the acting register, not being intended to call on the parties to file their pleadings; but that they should be prepared to file their exhibits, and name their witnesses to prove what they have set forth in their pleadings. Had the defaulting party shewed reasonable cause, and on that ground been admitted to plead, he, after pleading, of course becomes entitled to the notice of eight days, which the above-cited rule prescribes.

4. The points on which the acting register solicits the opinion of the Court, as stated in the 8th and 9th paragraphs of his letter, are as follows: In cases decided *ex parte*, under Section 3, Regulation II. of 1806, is it necessary that the notice prescribed by Section 12, Regulation XXVI. of 1814, should have been given, to render that decision legal? If a plaintiff in an original suit defaults at any stage of the proceedings previous to the completion of the pleadings, and neglect to proceed, although called upon by the notice required by the circular order of the Sudder Dewanny Adawlut, dated 5th November, 1812, is it necessary that the notice prescribed by Section 12, Regulation XXVI. of 1814, should be given previous to passing an order of dismissal?

5. In reply to those questions, I am desired to observe, that the notice above alluded to is not requisite in the latter of the cases stated, but is requisite in the former to the plaintiff, whom the circumstance of the case being tried *ex parte* does not exempt from the necessity of proving his suit, and who, of course therefore, is entitled to due notice before he is compelled to exhibit his proof.

6. I am directed to add, that the Court, who have not had the full proceedings before them, do not mean to interfere at all in the particular case to which this correspondence

relates: the respondent, if dissatisfied with the judge's order for restoring the suit to the file, is of course at liberty to appeal against it to your court.

7. You are requested to furnish the judge of Burdwan, and the acting register, with a copy of these opinions for their information and guidance.

October 7, 1825.

To the Judge and Magistrate, Southern Division of Bundelkund, dated the 11th November, 1825.

No. 407.

1825.

Reg. VIII. Sec. 2

I am desired by the Courts of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter, under date the 25th ultimo, requesting to be informed, whether the provisions of Section 2, Regulation VIII. 1825, are meant to be applicable to individuals usually attendant in every court, civil and criminal, under the designation of *omedwars*, who are neither directly nor indirectly private servants of the judge and magistrate.

2. In reply, I am desired to acquaint you, that the prohibition contained in the regulation above quoted extends to all individuals not being duly constituted officers of the court, and that the latter description of persons alone can legally be employed in the transaction of any official duties. The enactment, in question, however, need not, in the opinion of the Court, be construed to preclude persons other than the regularly appointed officers of the courts from taking copies of public documents, with the sanction of the judge and magistrate, for the use of private individuals, at the expense of those who may employ them.

3. Should you deem the provisions of Regulation VIII. 1825, under the construction now given, to be objectionable, you are of course at liberty to submit through the prescribed channel, and with due observance of the provisions of Regulations I. and IX. of 1803, any proposed modification of them, which in your opinion may be expedient and proper.

November 11, 1825.

To the Acting Register and Joint Magistrate of Futtahpore, dated the 2nd December, 1825.

No. 408.

1814

Reg. XXVI.

Sec 16, Cl 4.

1824

Reg. XVI.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their opinion as to whether, under the provisions of Regulation XXVI. 1814, you are permitted to allow unauthenticated copies of proceedings and papers to be taken from your office on plain paper.

2. In reply, I am desired to acquaint you, that as clause 4, Section 16, Regulation XXVI. 1814, (which authorises individuals to make, with the permission of the courts, copies of papers for their private use, and at their own expense, on any paper which they may prefer) has not been rescinded by the provisions of Regulation XVI. 1824, you are at liberty to permit the continuance of the same practice.

December 2, 1825.

No. 409.

1814.
Reg. I. Sec. 11.
Cir Or. S. D. A.
20 April, 1818.

To the Judge of Zillah Etawah, dated the 2nd December, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th ultimo, together with its enclosures, bringing to the Court's notice, a practice which has prevailed in your court, of calculating the value of stamps upon the principal only of a suit without interest, and representing the loss to which Government has been subjected by the practice in question.

2. In reply, I am desired to acquaint you, that you are perfectly correct in your construction of the Court's circular order, bearing date the 20th of April, 1818, which had no reference whatever to the value of the stamp paper for plaint, to be used in suits instituted for the recovery of money, principal and interest; and consequently that the Persian proceeding of your predecessor, dated the 7th of July, 1818, was clearly founded on a misapprehension of the order above quoted, which misapprehension you will of course take the requisite measures to remove,

3. With reference to the suggestion contained in the fourth paragraph of your letter, namely, that letters from this office should be accompanied by a Persian translation for the use of the *omlah*, I am directed to observe, that the Court do not deem that measure to be either necessary or expedient.

December 2, 1825.

No. 410.

1814
Reg. II Sec. 3,
Cl. 1.

To the Judge of Zillah Dacca Jelalpore, dated the 16th December, 1825.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed, whether you are competent to entertain a suit instituted by a minor and his guardian, against the collector, for having, under the authority of the court of wards, disposed of the minor's estate.

2. In reply, I am desired to acquaint you, that the Court are not aware of any regulation which debars a minor, under these circumstances, from the same rights and privileges with respect to the mode of seeking redress from an alleged grievance, as are enjoyed by the community generally; and that in the Court's opinion he is, with his guardian, fully competent to institute a suit of the nature alluded to.

3. It will of course be the duty of the judge, to whom the petition of plaint is preferred, to forward the same under the first clause of Section 3, Regulation II. 1814, for the consideration of the Board of Revenue, and to proceed to the trial of the suit under the fourth clause of the above section, in the event of its not being deemed requisite by that authority and direct redress should be afforded.

December 16, 1825.

No. 411.

1816.
Regs. XXII.

To the Acting Magistrate of Zillah Rajeshahye, dated the 23rd December, 1825.

The Court of Nizamut Adawlut have had before them your letter, under date the 14th instant, requesting their opinion as to whether British subjects are, or are not, liable to assessment under the provisions of Regulation XXII. 1816.

2. In reply, I am desired to acquaint you, that as Regulations IX. and XVI. of 1814, (extending the provisions of Regulations XIII. 1813, and III. 1814, to all and every person and persons whomsoever, British subjects and others,) have been rescinded, and not re-enacted by Regulation XXII. 1816, the Court are of opinion, that the rules relative to the *chokeedaree* assessment are not applicable to European British subjects.*

December 23, 1825.

To the Moorshedabad Court of Appeal, dated the 27th January, 1826.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 23d instant, requesting the Court's construction of two points of Regulation XVI. 1824.

2. In reply to his first question, I am desired to communicate to you the opinion of the Court, that in the case of powers of attorney, filed previous to the promulgation of the regulation referred to, copies thereof should be written on stamp paper of the value used for the original instrument, under the regulations in force at the time such original instrument was executed.

3. The Court are at a loss to furnish you with a satisfactory reply to the second question, as there does not appear to be any rule extant by which the value of security bonds for a specific amount should be determined; Section 11, Regulation I. 1814, having been rescinded by Section 3, Regulation XVI. 1824, and being the only rule which was applicable to the case.†

4. A copy of your officiating judge's letter, and of this reply, will be submitted to Government for such orders as may be deemed necessary on the subject.‡

January 27, 1826.

To the Moorshedabad Court of Appeal, dated the 3rd March, 1826.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your court, in calculating the periods limited for admitting regular appeals preferred direct to the court, not to allow the deduction of the interval, between a party furnishing the prescribed stamp paper in the *zillah* court, and the copy of the decree being tendered or delivered to him, as prescribed by clauses 7, 8, 9, 10, Section 8, Regulation XXVI. 1814; and stating also his opinion, that it was decidedly intended by clause 10 to provide for the deduction in question.

2. In reply, I am desired to observe, that the Court entirely concur with your officiating judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special, appeals.

March 3, 1826.

* The Government concurred in this construction, but being of opinion, that Europeans should be assessed, desired the Court to introduce a rule to that effect in some future enactment; but a convenient opportunity has not subsequently presented itself. Letter from Sec. to Govt. Judicial Dept. dated 19th January, 1826.

† See Construction, 22nd September, 1826, No. 431, page 181.

‡ Provided for by Regulation X. 1829. See Schedule A, Article 8, and Schedule B, Article 1.

No. 412.

1824.
Reg XVI.
1814
Reg I Sec 11.

No. 413.

1814.
Reg XXVI Sec. 8,
Cl 7 to 10.

No. 414.

1824
Reg. XV
1813
Reg. VI Sec. 5,
Cl. 3.*To the Acting Magistrate of Zillah Moradabad, dated the 17th March, 1826.*

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 28th of January last, with its English and Persian enclosures, requesting the instructions of the Court, as to the mode of proceeding you should adopt for the purpose of securing the execution of certain orders issued by you to the collector of the district.

2. With reference to case marked A, I am directed to observe, that the original order issued from your court to the *tehsildar*, to hold the estate therein alluded to under attachment, was irregular. The authority indeed to cause an attachment at all is not expressly recognized by Regulation XV. 1824, to vest in the criminal courts, but it may be presumed to exist with analogy to the rule contained in clause 3, Section 5, Regulation VI. 1813.* In all such cases, however, the attachment of the disputed lands should be made directly by the court before whom the matter is depending, without the intervention of the collector.

A magistrate not
empowered to fine
a collector for dis-
obeying his orders.

3. Under this view of the case, therefore, the fine imposed by you on the collector, even admitting it to be otherwise legal, could not be upheld; but, on the general question, I am desired to acquaint you, that the Court are not aware of any regulation to authorize a magistrate's having recourse to the measure of fining a collector, and that the measure is of a nature which nothing short of a positive and explicit enactment could warrant.†

1804
Reg. III Sec. 4,
Cl. 4

4. With reference to the second case marked B, the Court remark, that your order to the collector to retain in attachment the estate of the parties accused, after they had appeared to answer the charge against them, was altogether illegal, and contrary to the rule contained in clause 4, Section 4, Regulation III. 1804, which prescribes, that the attachment be removed immediately on the attendance of a party whose property may have been attached on the ground of his absence, provided he attend within the period mentioned in clause 5, as the absentees in the case in question appear to have done.

March 17, 1826.

No. 415.

1824.
Reg. XV.
1821
Reg. II. Sec. 5.*To the Magistrate of Zillah Allahabad, dated the 14th April, 1826.*

The Court of Nizamut Adawlut have had before them your letter, dated the 27th ultimo, requesting to be informed, whether cases pending in the criminal court, under Regulation XV. 1824, may be referred for trial to a *sudder ameen*, vested with special powers, under Section 5, Regulation II. 1821.

2. In reply, I am desired to communicate to you the opinion of the Court, that cases of the nature specified are not properly cognizable by the officers in question.

April 14, 1826.

No. 416.

1824
Reg. XVI.*Extract from a letter to the Secretary to Government in the Judicial Department, dated
the 14th April, 1826.*

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 6th instant, together with its enclosed copy of a letter from the

* This part of the construction has been virtually superseded by the construction dated the 4th September, 1829, as far as regards the competency of a commissioner of circuit to attach, or to direct the collector to attach.

† See No. 364, page 151.

judge of *zillah* Meerut, requesting information as to whether the rules contained in Regulation XVI. 1824, relative to *mokhtarnamahs*, should be considered applicable to those documents filed in the courts of the *moonsiffs*.

2. In reply, I am directed to communicate to you the opinion of the Court, that it never could have been intended to subject *mohhtarnamahs* filed in the courts of the *moonsiffs* to the heavy stamp duty, prescribed by the regulation above quoted.

April 14, 1826.

To the Moorshedabad Court of Appeal, dated the 28th April, 1826.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 16th ultimo, enclosing copies of two petitions from Kasheepershaud Rai, of your court's proceedings, and of a correspondence between your court and the judge of *zillah* Rajeshahye, regarding certain doubts entertained by Mr. Pringle upon the legality of an order passed by your court on a petition presented by the *mokhtar* of Rajinder Mitter.

2. In reply, I am desired to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting *mokhtars* to file *vakalutnamahs*, in suits wherein their principals are parties; and to acquaint you, that the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it.

3. The Court observe, that to execute *per alium*, [that other being duly authorized,] is to execute *per se*; and that the regulations consider these acts as one and the same; as is clear from the more explicit wording of Section 18, Regulation XXVII. 1814, which prescribes the performance of certain acts to be done *by the party or his authorized agent*. Although the wording of Section 8, Regulation VII. 1793, is not different from that of Section 21, Regulation XXVII. 1814, yet, from the time of its enactment (two and thirty years ago), *vakalutnamahs* executed by agents duly authorized, have, by all the courts, been regarded as equally good and valid with those executed by the parties themselves.

4. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the regulations in force do not appear to prohibit.

5. You will be pleased to furnish the judge of Rajshahye with a copy of this letter, for his information and future guidance.

April 28, 1826.

To the Moorshedabad Court of Appeal, dated the 5th May, 1826.

The Court of Sudder Dewanny Adawlut have had before them your officiating judge's letter, dated the 24th ultimo, requesting to be informed, whether it is competent to the courts to order the whole fees to be paid to the *vakeels* in cases adjusted by *razeenamah* after evidence has been taken; or whether the rule in Section 31, Regulation XXVII. 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken.

No. 417.

1814.

Reg. XXVII.

Sec. 21.

1793.

Reg. VII Sec. 8.

No. 418.

1814

Reg. XXVII.

Sec. 31.

2. In reply, I am desired to communicate to you, for the information and guidance of your officiating judge, that in cases adjusted by *razeenamah* after evidence has been completed, the *vakeels* are entitled to their whole fees, in like manner as if no *razeenamah* had been admitted.

May 5, 1826.

No. 419.

1818
Reg. XII Sec 3,
Cl 4
1824
Reg. VI. Sec 5.

To the Calcutta Court of Circuit, dated the 12th May, 1826.

I am desired by the Court of Nizamat Adawlut to acknowledge the receipt of your letter, under date the 3d instant, requesting their opinion on the following question, relative to the power of a magistrate under clause fourth, Section 3, Regulation XII. 1818, with reference to the amendment of that section contained in Section 5, Regulation VI. 1824, viz. whether on a *second* conviction of simple theft of property not exceeding 300 rupees, (the amount or value of property stolen in the *first* case being above 10 rupees, but not exceeding 300 rupees,) a magistrate is competent to pass sentence of punishment to the extent of the powers vested in him by Regulation XII. 1818; or whether it is incumbent on him to commit the case for trial before the court of circuit.

2. In reply, I am desired to communicate to you the opinion of the Court, that a magistrate is competent to pass sentence of punishment in such case, provided that the amount of the latter theft does not exceed the sum of 300 rupees.

3. I am directed at the same time to observe, that there appears to be an ambiguity in the wording of Section 5, Regulation VI. 1824, inasmuch as agreeably to the provisions of Regulation XII. 1818, previous conviction of a heinous crime of whatever nature does not preclude the magistrate's judicial cognizance of a charge of the simple theft not exceeding 300 rupees.*

May 12, 1826.

No. 420.

1814
Reg. XXVII.
Sec. 37, Cl. 3.
1824.
Reg. XVI.

To the Judge of Zillah Rahjeshahye, dated the 26th May, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, submitting for the consideration and opinion of the Court, the following question, namely : in causes where the Hon'ble Company in their commercial capacity are one of the parties, is the written order on unstamped paper, filed as directed in clause 3, Section 37, Regulation XXVII. of 1814, sufficient legal authority for the *vakeel* of Government to conduct the suit or defence on the part of the Company ? Or, if Azeem prosecute Kurreem Oolla, the agent on the part of the commercial resident of Rungpore at the Bograh factory, and, on the plaint being forwarded to the Board of Trade, under Regulation II. of 1814, it is resolved that the suit shall be defended by the Company, is an unstamped order, prepared according to clause 3, Section 37, Regulation XXVII. 1814, by the commercial resident of Rungpore in his official capacity, sufficient authority for the Government *vakeel* to conduct the defence ?

2. In reply, I am desired to communicate to you the opinion of the Court, that clause 3, Section 37, Regulation XXVII. 1814, not containing any mention of stamp paper,

* Regulation VI. 1820, prescribes the course of proceeding to be pursued in such cases.

and not having been rescinded by any subsequent enactment, such order having always hitherto been received by the courts though upon unstamped paper, and the words, "commercial transactions," in the appendix to Regulation XVI. of 1824, not appearing to the Court to be properly construable as inclusive of the order of Government, or an officer of Government, to plead in a suit in which Government is a party, the Court are of opinion that such order may be accepted as a sufficient authority, though written upon unstamped paper.

May 26, 1826.

To the Judge of Zillah Allahabad, dated the 2nd June, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 23rd ultimo, requesting the opinion of the Court on the following point. An individual, whose property is attached for a balance of revenue, executes the bond required by Section 15, Regulation V. 1812, but omits to prefer his suit within the prescribed period, and the amount of the demand is in consequence realized from him or his surety can a suit subsequently instituted by him, to try the justness of the claim, be decided on a summary inquiry under the spirit of Section 17 of that regulation, or must such suit be a regular one?

2. In reply, I am desired to communicate to you the opinion of the Court, that although the omission on the part of the tenant and his surety to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, according to the ordinary process, yet it does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property.

June 2, 1826.

To the Acting Magistrate of Zillah Ghazepore, dated the 23rd June, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 11th instant, requesting the opinion of the Court, as to whether landholders in the district of Benares are liable to a fine by the magistrate in cases of theft of property at night from within their villages.

2. In reply, I am desired to refer you to clause 1, Section 3, Regulation II. 1797, (declared to be still in force, by Section 20, Regulation XIV. 1807,) and to communicate to you the opinion of the Court, that landholders are liable to fine, only when they wilfully neglect to apprehend and deliver over to the police officers any persons whom the village watchmen are required to apprehend by Section 14, Regulation XVII. 1795, or when they make any other default of the nature described in the rule above quoted.

3. I am, at the same time, directed to call your attention to the circular orders of the Nizamut Adawlut, under date the 10th November, 1820, No. 45 of the printed orders.*

June 23, 1826.

No. 421.

1812,
Reg V. Sec. 15.

No. 422.

1797
Reg. II, Sec 3
Cl 1.
1807.
Reg XIV Sec 20.
1795
Reg XVII. Sec. 14.

* No. 241, page 226, vol 1, N A. Cir. Or. Baptist Mission Press Edition.

No. 423.

1822
Reg I
Secs 3 and 4.
1807
Reg. IX. Sec. 19.

To the Magistrate of Zillah Behar, dated the 30th June, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th instant, requesting their opinion, as to whether you are authorized to punish persons convicted of affray attended with slight wounding, and whether you are competent to award labour, as part of the sentence, against persons convicted of such offences.

2. On the first point, I am desired to communicate to you the opinion of the Court, that as by Section 3, Regulation I. 1822, affrays unattended with homicide, *severe* wounding, or other aggravating circumstances, are declared punishable by the magistrate, you are competent to punish of your own authority persons implicated in an affray, although attended with slight wounding; and on the second point, I am directed to observe, that, as the magistrates are competent to award labour to offenders sentenced under Section 19, Regulation IX. 1807, [conformably to which they are, by Section 4, Regulation I. 1822, declared competent to pass sentences in cases of affray,] under the regulation last quoted it would appear to be discretionary with the magistrate in such cases to accompany his sentence with an award of labour and irons, or not, according as he may judge fit, with reference to the particular circumstances of each case, and to the age, bodily condition, and rank in life of the offenders.*

3. At the same time the Court desire me to express their hope, that you will not lose sight of the instructions contained in their circular order, under date the 27th of August 1819.†

June 30, 1826.

No. 424.

1803
Reg. III Sec. 16.

To the Acting Joint Magistrate of Futtelpore, dated the 30th June, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 13th instant, together with its enclosed petition (and translation thereof), from the *sudder ameen* at your station.

2. In reply, I am desired to acquaint you, that the Court do not perfectly comprehend the object of the petitioner, but with reference to the desire he has expressed to be informed, whether he should decide according to *shurreh* [Mahomedan Law] or not, I am directed to observe, that he should so decide in the cases detailed in Section 16, Regulation III. 1803, wherein Moosulmans are the parties, applying through you for information, where he may need it on any doubtful point of law, to the established law officer of the court of Cawnpore or Allahabad, as the case may belong to the one district or the other.

3. You will be pleased to communicate the above remarks to Surajool Hussun, in reply to his representation submitted through you.

June 30, 1826.

No. 425.

1824
Reg. XIV.

To the Judge of Zillah Allahabad, dated the 14th July, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26th ultimo, requesting to be informed, whether, in referring summary suits to a collector,

* The magistrate's powers with respect to the offence of affray have been enlarged by Regulation VIII. 1828

† No. 223 in page 204, vol. 1, of N. A. Cir. Or. Baptist Mission Press Edition.

under Regulation XIV. 1824, it is necessary, that each individual case should be accompanied by a separate English precept.

2. In reply, I am desired to communicate to you the opinion of the Court, that under clause 2, Section 2 of the regulation above cited, it is necessary, that each case referred should be accompanied by a separate precept.

July 14, 1826.

To the Magistrate of Zillah Bundelkund, dated the 14th July, 1826.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 13th ultimo, requesting their opinion as to whether, with advertence to the provisions of Section 5, Regulation III. of 1826, in the event of a prisoner, confined under civil process, being sentenced to a reduction of his allowance for the space of two months, if the said prisoner should subsequently satisfy the demand of his creditor, (with a view, perhaps, to avoid the penalty of spare diet by attaining his release from the civil power,) the magistrate would be authorized to commute the punishment so awarded to fine or imprisonment, or in any mode to interfere with his release, in pursuance of the sentence of the criminal court.

2. In reply, I am desired to communicate to you the opinion of the Court, that the magistrate would not be authorized to commute in any manner the punishment so awarded, but that the prisoner should, on payment of the demand against him, be immediately released.

July 14, 1826.

To the Calcutta Court of Appeal, dated the 28th July, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th of May last, requesting their opinion on the following points :

First. Whether in a suit brought in the first instance in a *zillah* court, under clause 1, Section 30, Regulation II. 1819, and decided by that court under clause 6, after receiving the report of the collector made in pursuance of the latter clause, a regular appeal is open to the provincial court from such decision, or whether the appeal can be admitted on special grounds only.

Secondly. Supposing the *zillah* court to try and decide a suit instituted under the clause and section above-cited, without making the reference therein required, does such omission invalidate the whole proceeding and decision of the *zillah* court, and render a new trial necessary *ab initio*, or what is the proper course to correct the error ?

2. On the first question, I am desired to communicate to you the opinion of the Court, that the parties in the suits therein referred to are entitled, as a matter of right to a regular appeal from the decision of the *zillah* court; and on the second question, that under the circumstances therein stated, a new trial would not be necessary, but that, on such occasions, your court should send back the case to the court below for retrial, after having

No. 426.

1826
Reg. III. Sec. 5.

No. 427.

1819.
Reg. II Sec. 30,
Cl. 1.

obtained the collector's report; this course of proceeding appearing to be a sufficient remedy for the defect, without exposing the parties to any increase of expense.

July 28, 1826.

No. 428.

Reg. XXXVI.
1793
1824.
Reg. XVI

To the Judge of Zillah Midnapore, dated the 4th August, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, with its enclosure from your register, requesting the opinion of the Court as to the description of stamp paper on which copies, required by individuals, of deeds registered under Regulation XXXVI. of 1793, should be written, in conformity with Regulation XVI. of 1814.

2. In reply, I am desired to observe, for the information and guidance of your register, that supposing such deeds not to have been filed in any court of judicature, and that copies of them are required from the office established for the registry of deeds, such copies must, agreeably to the rule for copies contained in the regulation last quoted, be written either on paper bearing the same stamp as the original deed, or on paper of the value of eight rupees, according as the party taking out the copy may, or may not, have a direct interest in the subject matter of the deed.

3. The Court however cannot concur with your register, that it must follow from this construction, that all copies of deeds which may have been filed in civil suits, must also be written on stamp paper of the value of eight rupees; inasmuch as that, having been filed, they become records, which are specially exempted from the description of stamps required for other deeds, not of record.*

August 4, 1826.

No. 429.

Reg. IV. Sec. 2.
1793.
1814.
Reg. XXVI Sec. 5,
Cl. 4.

To the Judge of Zillah Shahabad, dated the 4th August, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22nd ultimo, with its enclosure from your register, requesting the Court's opinion relative to the construction of Section 2, Regulation IV. 1793, and clause 4, Section 5, Regulation XXVI. 1814.

2. In reply, I am desired to observe, for the information and guidance of your register, that the former rule is not modified by the latter, and that no plaint can legally be filed, but by the parties, or their *vakeels* duly empowered.

3. The Court, however, do not deem it necessary, that the plaintiff should be nonsuited in a case where the plaint may have been irregularly filed, as described by your register, [viz. by a *mohhtar* :] in such cases they are of opinion, that the parties should be instructed to appoint *vakeels* to conduct their suit, or attend and conduct them in person: on their complying with which instructions, the cases should be tried and decided, as if the irregularity had not occurred.

August 4, 1826.

* See Regulation X. of 1829, Schedule A, Articles 20 to 23, and Schedule B, Article 3.

To the Dacca Court of Circuit, dated the 22nd September, 1826.

The Court of Nizamut Adawlut have had before them two letters from your senior judge, dated the 1st and 2nd instant, with their respective enclosures, relative to a difference of opinion which has arisen between your court and the magistrate of Dacca Jelal-pore, as to the proper construction of Section 3, Regulation XV. 1824.

2. In reply, I am desired to communicate to you the opinion of the Court, that the order of your senior and third judges, dated the 16th and 24th of June last, directing the magistrate to make further inquiry in the mode pointed out by the regulations into the alleged fact of dispossession, in the case of Kishen Chunder Baboo *versus* Anund Chunder, was legal and proper.

3. To avoid misconstruction, however, I am directed to add, that the Court do not look on the order in question as the result of an appeal entertained on the merits of the case, but merely as an interlocutory order; the object of which was to cause the performance by the magistrate, of a duty which he was bound, but had omitted, to perform under the provisions of Regulation XV. 1824, previously to passing a decree under that enactment.

4. The Court are at the same time of opinion, that the admission of an appeal from a decree passed under the enactment above cited, should be admitted solely on the plea of the irrelevancy of the regulation to the case appealed.*

September 22, 1826.

To the several Courts of Appeal, dated the 22nd September, 1826.

It having been brought to the notice of the Court of Sudder Dewanny Adawlut, that there is no rule extant by which the value of security bonds for a specific amount should be determined; Section 11, Regulation I. 1814, having been rescinded by Section 3, Regulation XVI. 1824, and being the only rule which was applicable to the case; I am desired to communicate to you the opinion of the Court, that under such circumstances, instruments of the nature above specified should be received on plain paper, until the Government may declare, by a formal enactment, the amount of the stamp paper on which they should be executed.†

2. You will be pleased to furnish the several judges within your division, with a copy of the above construction for their information and guidance.

September 22, 1826.

In the case of Murdun Sing and others *versus* Nujub Ali and others, it was held, that notwithstanding the *sixty* years mentioned in Regulation II. 1805, no claim can go back beyond the date of the cession of the province; and this, without reference to defendant's possession having been fair or unfair.

September 26, 1826.

No. 430.

1824
Reg. XV Sec 3.

No. 431.

1814
Reg. I. Sec 11.
1824.
Reg. XVI Sec 3.

No. 432.

1805.
Reg. II.

* By Regulation II. of 1829, however, an appeal from a decision under Regulation XV. of 1824, may now be admitted by the commissioner of circuit on any ground.

† This has been since done by Regulation X. of 1829, Schedule B.

No. 433.

1796
Reg. X.*To the Acting Magistrate of Zillah Ghuzeeapore, dated the 23rd October, 1826.*

The Court of Nizamut Adawlut have had before them your letter, dated the 1st ultimo, together with its enclosed copy of correspondence on the subject of the prisoners Bisram and others, whose release has been ordered by the court of circuit; to which measure you object.

2. In reply, I am desired to acquaint you, that as it was clearly competent to the court of circuit to annul your order in case of those individuals, on the ground that the evidence was, in the judgment of that court, insufficient for their conviction; your reference was not agreeable to the intent of the provisions of Regulation X. 1796: the court of circuit therefore was authorized to decline making it, and this Court does not deem it necessary to enter into the merits of the case, or to pass any order on the subject.

October 23, 1826.

No. 434.

1824
Reg. XV.*To the Benares Court of Circuit, dated the 27th October, 1826.*

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, with its enclosed Persian proceedings, in the case of Bheekun *versus* Nukchede, submitted at the request of the acting magistrate of Juanpore, under the provisions of Regulation X. 1796, with a view to ascertain the opinion of this Court, as to the relevancy or otherwise of Regulation XV. 1824, to the case of the individuals above-mentioned.

2. In reply, I am desired to communicate to you the opinion of the Court, that as the house, regarding which the present dispute originated, appears from the evidence taken before the assistant, and the further inquiry made by the magistrate, to have been actually locked up by the plaintiff Bheekun, previously to his departure for Benares, his possession must be held to have continued even during his absence; that the violent entry by the defendant Nukchede, effected by forcibly opening the lock, must be considered to constitute a case of dispossession within the meaning of the provisions of Regulation XV. 1824; and that the delay in bringing forward the case is sufficiently explained by the absence of the plaintiff, who was ignorant of the dispossession until, returning to Juanpore, he found what Nukchede had done.

October 27, 1826.

No. 435.

1825.
Reg. XVI.
1808
Reg. IX. Sec. 5.
1822
Reg. V.*To the Commissioner of Rungpore, dated the 3rd November, 1826.*

The Court of Nizamut Adawlut have had before them your letter, dated the 14th ultimo, requesting to be informed whether the mitigation of the punishment of highway robbery, contained in Regulation XVI. of 1825, should be held to apply to cases of outlawed robbers, convicted under the provisions of Section 5, Regulation IX. of 1808; and if so, whether or not such trials are to be referred to the Nizamut Adawlut.

2. In reply, I am desired to observe, that all proclaimed robbers are now tried under Regulation IX. 1808, as modified by Regulation V. 1822; that is, they may, accordingly as the superintendent of police may decide, be tried either for the contumacy, or for the

offence on account of which they were proclaimed ; and to communicate to you the Court's opinion, that where they are tried for the original offence, the court trying them may award either the full or mitigated sentence, as the case may be aggravated or unaggravated ; referring the trial to this Court, where the full, and ordering execution of the sentence without reference, where the mitigated sentence may be passed. Where the trial may be for the contumacy only, and the prisoners may be convicted of the charge, the Court are of opinion, that the judge trying them should still conform to the provisions of Section 8, Regulation IX. 1808, that is, pass the full sentence, and refer the trial to the Nizamut Adawlut.

November 3, 1826.

To the Magistrate of Zillah Jungle Mehaul, dated the 3rd November, 1826.

The Court of Nizamut Adawlut have had before them your letter, dated the 24th ultimo, requesting the Court's opinion, as to whether a *cauzy* is competent to authenticate a power of attorney, so as to render it incumbent on the courts to admit it.

2. In reply, I am desired to communicate to you the opinion of the Court, that the term "other law papers" used in the preamble to Regulation XXXIX. of 1793, must be held to include powers of attorney, the authentication of which therefore is within the competency of a *cauzy*; but at the same time the Court observe, that you are clearly at liberty to call for further evidence in any case, where there may appear reason to doubt the due execution of an instrument of that nature by the individual whose act and deed it purports to be.

November 3, 1826.

To the Moorshedabad Court of Circuit, dated the 10th November, 1826.

The Court of Nizamut Adawlut have had before them a letter from your officiating judge the Hon'ble W. Melville, dated the 4th instant, submitting a copy of his correspondence with the magistrate of Beerbboom, and of the proceedings in the cases of Syud Yar Ally and Lukheenarain, petitioners.

2. In reply, I am desired to communicate to you the opinion of the Court, that the conduct of the magistrate, in withholding the proceedings required, until after your officiating judge's order had been repeated three times, was obviously improper, and unwarranted by Regulation X. 1796, or any other regulation; and the Court desire, that you will intimate to him their expectation, that he will yield more ready obedience in future to the requisitions of superior authority, and that he will act in stricter conformity to the rules laid down for his guidance.

3. On the particular point at issue between your officiating judge and the magistrate, I am desired to observe, that although no individual has a right to appeal to your court after the expiration of one month from the date of the magistrate's order, calculated conformably to the rules contained in clause 10, Section 8, Regulation XXVI. 1814; and although, according to Section 5, Regulation III. 1821, your court is not competent to

No. 436.

Reg. ¹⁷⁹³ XXXIX

No. 437.

1796
Reg. X.
1814
Reg. XXVI.
Sec 8, Cl 10.
1821.
Reg. III Sec 5.
1814
Reg. XXV Sec 12,
Cl. 1

receive a petition of appeal after the expiration of the above-mentioned period, without due cause being assigned for the delay, yet that you are not only authorized, but required, under the general powers vested in you, as a superintending authority, by clause 1, Section 12, Regulation XXV. 1814, to call for a magistrate's proceedings in any case wherein you may see reason to presume a failure of justice, without reference to the source from which your information is derived.

November 10, 1826.

No. 438.

1824
Reg. XVI.
Sec. 6, Cl. 3.
Sec. 7, Cl. 1.

Extract of a letter to the Judge of the Southern Division of Bundelkhand, dated 26th November, 1826.

PAR. 3. The only point upon which the Court deem it necessary to pronounce an opinion is, as to whether the register was, or was not, competent to decline registering a deed brought to him for that purpose on paper not bearing the prescribed stamp; and on this point I am desired to observe, with reference to the provisions contained in clause 3, Section 6, Regulation XVI. 1824, and clause 1, Section 7 of the same enactment, to which your attention is particularly directed, that it was not only competent to, but incumbent on the register to decline registering an instrument not drawn upon the paper required by that regulation, provided that, with reference to Section 8, the irregular stamp does not equal or exceed in value the stamp which ought to have been used. If it equal or exceed the regular stamp in value, the register has clearly no right to take exception to, or to decline registering the deed so stamped.

No. 439.

1803
Reg. II Sec. 5.
1825
Reg. XXI.

To the Secretary to Government in the Judicial Department, dated the 24th November, 1826.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 9th instant, together with its enclosed correspondence, relative to a difference of opinion between the assistant to the commissioner in Kumaon and the judge of *zillah* Seharunpore, upon the construction of Section 5, Regulation II. 1803, requesting the Court to issue instructions upon the subject to the judge of the latter district.

2. In reply, I am desired to state, for the information of his Excellency the Right Hon'ble the Vice-President in Council, that, in the opinion of the Court, the suits which form the subject of the correspondence adverted to were clearly cognizable in the *zillah* court of Seharunpore, the defendants in both instances residing within that district; but I am directed to add, the Court cannot form any opinion relative to matters arising within the jurisdiction of the Deyra Doon, which tract of country has, by Regulation XXI. of 1825, been annexed to Kumaon, where the laws and regulations of Government are not in force. Instructions to this effect will be issued to the judge of *zillah* Seharunpore.

November 24, 1826.

To the Judge of Zillah Burdwan, dated the 8th December, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 27th ultimo, together with its enclosure from the register of your district, requesting information as to the mode of proceeding to be adopted, in the event of a suit being preferred against him for an act done by him in his official capacity under Section 10, Regulation VIII. 1819.

No. 440.

1819
Reg VIII
Sec. 10
1793
Reg III.
Sec. 10.

2. In reply, I am desired to observe, for the information and guidance of yourself and of your register, that there appearing to be no provision either in Section 10, Regulation III. 1793, or any other enactment, which declares a register amenable to the jurisdiction of a *zillah* or city court for an act done by him in his official capacity, and the specific regulation also, under which the register of Burdwan presides at the sale of *putnee* tenures, not containing any provision of this nature, the Court are of opinion, that a suit will not lie against such officer, and should not be admitted.

3. The Court at the same time remark, that the exemption of the register from the jurisdiction of the court cannot operate injuriously to persons deeming themselves aggrieved, who will always be able to obtain redress, by an action against the *zemindar*, whose allegation of arrears occasioned the sale, or the purchaser, or both; by which course of proceeding the merits of the case may be as fully investigated as if the officer who presided at the sale had been made a defendant.

December 8, 1826.

From the Calcutta Court of Appeal, dated the 15th February, 1826.

With reference to the superior Court's letter, dated the 6th ultimo, we have the honor to transmit the subjoined copy of a letter from the judge of Hooghly, bearing date the 11th instant, and of the list which accompanied it.

No. 441.

1825.
Reg XVIII.

From the Judge of Hooghly to the Calcutta Court of Appeal, dated the 11th February, 1826.

1. I have the honor to acknowledge the receipt of your letter, No. 71, of the 26th ultimo, together with a copy of a letter from the Court of Sudder Dewanny Adawlut, dated the 6th of January, regarding certain causes lately pending before the Chinsurah court of appeal.

2. In compliance with the 3rd paragraph of the letter from the Sudder Dewanny Adawlut, I have the honor to submit a list of the causes, agreeably to the form prescribed by the superior Court; and at the same time, beg permission to state, that the causes contained in the paper marked A, were actually admitted by the Chinsurah court of appeal, and were pending before that tribunal, upon the transfer of the settlement to the British commissioners.

3. The papers marked B and C contain respectively, a list of such summary appeals, and miscellaneous petitions as were depending before the same authority, at the time of the transfer.

4. The records in the several causes having been duly made over to the Hooghly court of *dewanny adawlut* by the commissioners for Chinsurah, the late judge was desirous

of being informed, whether these causes were to be transferred to the Calcutta provincial court of appeal for decision, or in what other way they should be disposed of.

To the Calcutta Court of Appeal, dated the 3rd March, 1826, in reply to their letter of the 15th February, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, with its subjoined copy of a letter from the judge of *zillah* Hooghly, and of the list which accompanied it, relative to certain causes lately pending before the Chinsurah court of appeal.

2. In reply, I am desired to acquaint you, that the Court of Sudder Dewanny Adawlut, under the discretion vested in them by clause 4, Section 4, Regulation XVIII. 1825, direct that you will call for the proceedings in the cases in question, and try the appeals, having first served the prescribed notice on the parties.

From the Calcutta Court of Appeal, in reply to the above, dated the 19th December, 1826.

With reference to the orders of the Sudder Dewanny Adawlut conveyed in your letter of the 3rd of March last, we request you will report to the Court, that having called for the proceedings in the several cases therein referred to, we see reason to doubt whether they are properly referrible to this Court, under the provisions of Regulation XVIII. 1825.

2. The second clause of Section 4 of that Regulation refers to appeals from decisions in civil suits which had been decided by the European Court at Chinsurah, and which were appealable to the superior Court at *Batavia*; whereas on examination of the proceedings in the cases in question we observe, that they are appeals from decisions passed by an European Court of inferior jurisdiction at Chinsurah, [Mr. Herklotts, acting 2nd resident,] pending before a higher tribunal [the court of appeal, consisting of Mr. Oveibock, the 1st resident, and Messrs. Bowman and T. Michel,] at the same place, and consequently as we presume (especially considering the trifling amount or value in action, some of them for 8 and 9 Rs. not appealable to the superior Court at *Batavia*.

3. Under these circumstances, and considering the very heavy pressure of business already before this court, we are induced to solicit the superior Court's reconsideration of their orders, under date the 3rd March last, and to suggest, that the cases above-mentioned be sent back for trial and decision by the *zillah* judge of Hooghly, subject to further appeal to this Court or otherwise, as the case may be, under the general regulations in force.

To the Calcutta Court of Appeal, in reply to the above, dated the 29th December, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, in reply to my letter of the 3rd March last, on the subject of certain appeals from the European court at Chinsurah, and suggesting, for the reasons assigned, that those cases be sent to the judge of *zillah* Hooghly for trial and decision.

2. In reply, I am desired to acquaint you, that as there is no provision in Regulation XVIII. 1825, which authorizes a reference of such cases to the *zillah* judge; as it was evidently intended, that appeals from the decisions in question should lie somewhere, and as agreeably to the spirit of the enactment, your court appears the proper tribunal for hearing and deciding such appeals, the Court see no reason to depart from their former instructions, which you will be pleased to follow accordingly.

December 29, 1826.

To the Judge of Zillah Burdwan, dated the 20th December, 1826.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their construction of Section 2, Regulation III. 1826, regarding the appointment and removal of native officers attached to the civil jail

2. In reply, I am desired to acquaint you, that, as the magistrate is now responsible for the safe custody of the *dewanee*, as well as of the *foujdaree* prisoners, the appointment and removal of the native officers attached to the jails of both establishments should be vested exclusively in that officer; but that there does not appear to be any necessity for making a formal transfer of the *dewanee* jail *omlak* to the establishment of the *foujdaree* court.

December 29, 1826.

To the Judge of Zillah Goruckpore, dated the 23rd February, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, together with its enclosures from your register, requesting, for the reasons assigned, permission to review his judgment in the case of DeSouza *versus* Wroughton, or to be furnished with such instructions as the court may deem necessary on the occasion.

2. In reply, I am desired to observe, that Regulation XX. 1825, which has reference to the act of parliament passed in the fourth year of the reign of his present Majesty King George the Fourth, not having been promulgated until after the date on which your register had passed his decree in the above cause, he must be held to have been competent to exercise jurisdiction therein, and consequently that such prior decree must be considered to all intents and purposes as good and valid as if the regulation of posterior date, and the act of parliament which is promulgated, had never been passed. It appears therefore to the Court to be unnecessary to authorize a review, or to issue any special instructions relative to the case in question.

February 23, 1827.

To the Patna Court of Appeal, dated the 2nd March, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, together with its enclosed correspondence with the judge of Goruckpore, requesting the Court's opinion as to the proper construction of Regulation XV. of 1824.

2. In reply, I am desired to acquaint you, that the Court are disposed to concur in opinion with Mr. Bird, that all cases pending before him under Regulation VI. of 1813, are not necessarily referrible to the magistrate under the provisions of Section 4, Regulation XV. of 1824, but only such of them as may be brought *de novo* to the cognizance of the magistrate under Section 3, and certified by him to the judge under Section 4 of that enactment; in other words, that the original certificate from the *foujdaree* to the *dewanny* court, made under clause 1, Section 5, Regulation VI. 1813, is not a sufficient certificate for the purpose contemplated in Section 4, Regulation XV. 1824. In all cases, under Regulation XV. 1824, of course it is peremptory on the magistrate to send a copy of his proceeding to the civil court under Section 4, and on such proceeding appearing to relate

No. 442.

1826
Reg. III
Sec. 2

No. 443.

1825.
Reg. XX.

No. 444.

1824
Reg. XV.
Sec. 4.
1813
Reg. VI.
Sec. 5, Cl. 1.

to any case that may be pending before the judge under Regulation VI. of 1813, it will be the duty of the judge to transmit his proceedings therein to the magistrate for his consideration and orders, and to proceed no further in the investigation of such case, otherwise than on the institution of a regular suit.

March 2, 1827.

No. 445.

1822
Reg. VII
Sec 16.
1824
Reg XV.

To the Acting Magistrate of Zillah Moradabad, dated the 2nd March, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 6th ultimo, submitting the Persian proceedings in a case of dispossession, decided by you between Bukshee Ram *versus* Oulad Ali and others, which case was reversed by the court of circuit, and requesting the orders of the Court thereon.

2. With reference to the reason assigned by the court of circuit for reversing your order, namely, that it involved a reversal of the collector's previous decision, I am directed to observe that it appears insufficient, because it does not appear that that officer was making a settlement, or acting under the powers vested in collectors specially by Section 16, Regulation VII. 1822, when he ordered that Thakoor Bahadoor Singh should be put into possession: besides which, in his proceeding dated the 16th of October last, he expressly provided that such order should not be carried into effect, pending the inquiry which was instituted before the magistrate. Moreover, as Bukshee Rai had avowedly retained long and undisturbed possession of the property in dispute, your order in his favour seems to be correct and proper, under the provisions of Regulation XV. 1824.

March 2, 1827.

No. 446.

1825
Reg IV.

To the Magistrate of Dacca Jelalpore, dated the 9th March, 1827.

The Court of Nizamut Adawlut have had before them your two letters, dated the 17th of January and 26th ultimo, together with their respective enclosures, soliciting the instructions of the Court relative to the execution and enforcement of a penal bond in the case of indigo planters residing within your jurisdiction.

2. In reply, I am desired to communicate to you the opinion of the Court, that with regard to your taking penal recognizances from persons subject to your jurisdiction in your capacity of a magistrate of the East India Company, you should be guided by the provisions contained in Regulation IV. 1825; but the Court direct me to observe, that it is not within their province to determine what may be your duties and powers in this matter as a justice of the peace. If the state of things in your district appear to you to render it expedient that such recognizances should be taken, the Court recommend your consulting the advocate general, through the secretary to Government in the Judicial Department, as to their legality or otherwise.

March 9, 1827.

No. 447.

1824
Reg XV.

To the Acting Magistrate of Zillah Moradabad, dated the 9th March, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 17th ultimo, forwarding copy of a correspondence between yourself and the officiating judge of circuit

holding the session at your station, on the subject of a case which has been decided by you in conformity to Regulation XV. 1824, and which has been called for by that officer.

2. In reply, I am desired to observe, for your information and guidance, that though an appeal from a decision passed by a magistrate under the provisions of Regulation XV. 1824, can only be preferred to the judges at the *sudder* station, and by them admitted on the ground of irrelevancy only,* yet that the mere calling for papers does not necessarily involve the admission of appeal; and as a judge of circuit is clearly competent to examine any *foujdariee* proceedings he may think fit, Mr. Smith's requisition to be furnished with the case in question was legal and unexceptionable.

March 9, 1827.

To the Benares Court of Circuit, dated the 16th March, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 2d instant, re-submitting the Persian papers, with an English statement of the case of Munogee and others, called for by this Court's letter of the 19th of January last, and involving a question as to the proper construction of Regulation XV. 1824.

2. In reply, I am desired to communicate to you the opinion of the Court, that your orders in the case in question are correct and proper, as the regulation cited was never intended to apply to mere *hashthars* or cultivators of the soil; and as, even admitting its applicability to this class of persons, the acting magistrate of Juanpore should have decided in favour of the plaintiffs, their possession having been more recent than that of the defendants, and having been acquiesced in by the defendants without complaint to the Court for some considerable time previous to the occurrence of the present dispute.

3. You will be pleased to furnish the acting magistrate of Juanpore with a copy of this letter for his information and guidance.

March 16, 1817.

To the Moorshedabad Court of Appeal, dated the 30th March, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 19th instant, submitting a question, as to whether an European British subject can or cannot, under the provisions of Regulation XXXVIII. 1793, be appointed manager of an estate, conformably to Sections 26 and 27, Regulation V. 1812.

2. In reply, I am desired to acquaint you, that in the opinion of the Court an European British subject is not eligible to the management in question.

March 30, 1827.

To the Judge of Zillah Burdwan, dated the 30th March, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, and its enclosures, requesting the instructions of the Court as to certain suits instituted under the provisions of Regulation II. 1819, in which Government is not a party concerned.

No. 448.

1824
Reg. XV.

No. 449.

1793
Reg. XXXVIII.
1812
Reg. V
Secs. 26 and 27.

No. 450.

1819
Reg. II
Sec. 30.

* Appeals from the decisions of magistrates under Reg. XV. 1821, now lie to the commissioners of circuit. See Reg. II. 1829, Sections 3 and 4.

2. In reply, I am desired to acquaint you, that suits referred to the collector under clause 1, Section 30 of the regulation above quoted, which are referred, not for decision but for report only, should not be considered as having been transferred from the file of the judge in consequence of such reference; and therefore, that on their being returned with the required report from the collector, the judge should proceed to try and decide them in like manner, as if no such reference had been made. From this you will perceive, that the practice of your predecessor in treating such description of cases, when returned with the report of the collector, as actually decided, in permitting them to remain as decisions until appealed from, and then entering them under the head of miscellaneous cases, was irregular.

3. The Court therefore direct, that you re-admit all such cases on the regular file of your court, whether petitions objecting to the report of the collector may or may not have been presented.

4. With regard to suits, instituted in the collector's office in the first instance, and appealed to your Court under clause 7, Section 30, Regulation II. 1819, the Court are of opinion, that the monthly abstract, and annual report of civil causes decided and depending are deficient, in not having a column to show the number of such appeals. The Court desire therefore, that in your future statements, immediately under the line "Appeals from Registers," you will introduce the words "Appeals under Regulation II. 1819," for the purpose of enabling the Sudder Dewanny Adawlut to discriminate these from other description of appeals.

[N. B. The last paragraph was circulated for general information on the same date.]
March 30, 1827.

No. 451.

1821.
Reg. II
Sec. 7.
Reg III.
Sec. 4.

To the Joint Magistrate and Additional Register of Azimghur, dated the 30th March, 1827.

The Courts of Sudder Dewanny and Nizamut Adawlut have had before them your letter, dated the 6th instant, requesting their opinion upon the following points:

1st. In cases of *moonsiffs'* and *sudder ameens'* decrees referred for execution to the *sudder ameens*, under the provisions of Section 7, Regulation II. 1821, have the *sudder ameens* authority to order the imprisonment of civil debtors, or of persons resisting the process of the court, or in short the authority of confining any persons connected with the execution of those decrees, without reference to the presiding European authority?

2nd. In cases of the nature above described, have the *sudder ameens* authority to issue *perwannahs* to the *moonsiffs* or other *mofussil* civil officers?

3rd. In cases referred for investigation and decision to the *sudder ameens* by the magistrate, under the provisions of Section 4, Regulation III. 1821, have the *sudder ameens* authority to issue *perwannahs* to the *thanadars*, police *darogahs*, or *other *mofussil* police officers?

2. In reply, I am desired to acquaint you, that the Court entirely coincide with you in opinion, that no power is vested by the regulations in the *sudder ameens*, in any of the three mentioned cases, and that it is the duty of the *sudder ameens*, where the necessity may exist, to represent the matter to the judge, magistrate, or additional register as the case may be, and that the order should issue from the superior court.

March 30, 1827.

To the Judge of Zillah Beerbboom, dated the 15th June, 1827.

The Court of Sudder Dewanuy Adawlut have had before them your letter, dated the 8th instant, requesting to be informed whether clause 1, Section 13, Regulation XXIII. 1814, is intended to bar the cognizance of a suit by a *moonsiff*, if the defendant be not a resident inhabitant of his jurisdiction.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *moonsiff* is not competent to take cognizance of a suit for money or other personal property in which the defendant is not resident within his jurisdiction.

June 15, 1827.

To the Patna Court of Circuit, dated the 13th July, 1827.

The Court of Nizamut Adawlut have had before them your fourth judge's letter, dated the 23rd ultimo, reporting the termination of the city sessions for May last, and submitting the usual statements.

2. With reference to the remark of your fourth judge in the postponed case of Benee Singh and others, I am desired to observe, that the Court's construction of Regulation XV. 1824, under date the 17th of February, 1826, is not, as supposed by your fourth judge, directly at variance with their construction of the same enactment communicated to you in my letter, dated the 4th of May last; that, in the former instance, the Court held that the provisions of the above quoted regulation would be applicable, whatever may be the nature of the *property* in dispute; and, in the latter instance, that its provisions were never intended to apply to *mere kashthars* or cultivators of the soil, or in other words to persons having no right of property in the soil, but merely disputing about the right to cultivate.

3. You will be pleased to furnish your fourth judge with a copy of this letter for his information and future guidance.

July 13, 1827.

To the Magistrate of the City of Dacca, dated the 13th July, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th ultimo, forwarding an original petition from an individual named Abdooruheem, and requesting the opinion of the Court on the following question: Certain deeds having been filed in a civil suit, and a decree passed by the Sudder Dewanny Adawlut founded on the integrity of the same, is it competent to a magistrate to entertain and investigate on its merits a criminal prosecution for the forgery of those very deeds, instituted by the party cast against the decree holder?

2. In reply, I am desired to communicate to you the opinion of the Court, that, by analogy to the case of perjury, the preferring of accusations for which offence by parties in civil suits has been prohibited by Regulation III. 1801, it is not competent to a magistrate to entertain a charge founded on the alleged forgery of a document which had been exhibited in a civil court, unless the judge or judges of such civil court shall have directed a prosecution for forgery, or expressly declared that the party aggrieved by such document is at liberty to prosecute.

July 13, 1827.

No. 452.

1814
Reg. XXIII.
Sec 13.
Cl. 1.

No. 453.

1824
Reg. XV.

No. 454.

1801
Reg. III.

No. 455.

1819
Reg. II
Sec. 30,
Cl. 1.*To the Moorshedabad Court of Appeal, dated the 20th July, 1827.*

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3d instant, submitting, agreeably to the desire of the officiating judge, copies of minutes recorded by the several judges of your court, relative to the proper construction to be put upon certain provisions of Regulation II. 1819.

2. In reply, I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, dated the 28th of July, 1826,* written by order of the Sudder Dewanny Adawlut to the Calcutta court of appeal, in answer to a reference made by them on the subject of suits instituted under clause 1, Section 30, Regulation II. 1819, and decided under clause 6 of the above quoted section; and I am directed to add, that the Court concur in the opinion expressed by your officiating judge, that the parties referred to in the seventh and eighth clauses are also entitled, as a matter of right, to a regular appeal from the decision of the *zillah* court.

July 20, 1827.

No. 456.

1799.
Reg. VII.
Sec. 15
1819
Reg. VIII.
Sec. 18.*To the Judge of Zillah Jungle Mehanls, dated the 17th August, 1827.*

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, under date the 2nd of June last, requesting information on the following point, viz. whether a *zemindar* is at liberty to attach the *talook* of a defaulter through the agency of a *sezawal*, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *zemindar* is not competent, under the provisions of Section 18, Regulation VIII. 1819, to send a *sezawal* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit, under Section 15, Regulation VII. 1799, against the *talookdar* or other intermediate holder between himself and the actual cultivators.

August 17, 1827.

No. 457.

1803.
Reg. L Sec. 2.
1803.
Reg. VIII. Sec. 25,
Cl. 2.*To the Magistrate of Zillah Dacca Jelalpore, dated the 31st August, 1827.*

The Court of Nizamut Adawlut have had before them your letter, dated the 18th of May last, stating that on a reference to the Abridgement of the Penal Regulations by Mr. D. C. Smyth, magistrate of *zillah* Hooghly, published in the year 1821, you find in No. 221, Any person summoned by the magistrate, after receiving the summons not attending as required, or although attending refusing to give evidence, is liable to punishment by fine not exceeding 500 rupees, or imprisonment for six months on default of payment, under the orders of the Nizamut Adawlut, dated the 28th February, 1811;† but this circular letter not being forthcoming in the office, you request to be favoured with a copy of it.

* See No. 427, page 179.

† See No. 79, page 18.

2. In reply, I am desired to acquaint you, that the construction you have cited from Mr. Smyth's publication was not generally circulated to the *mofussil* courts, but merely an opinion delivered on a specific reference from the magistrate of Agia.

3. The Court of Nizamut Adawlut however, referring to former and subsequent enactments, are not of opinion that the construction in question should be adhered to, and they direct, that in the matter to which it refers you be guided by the rule contained in Section 2, Regulation L. 1803.

August 31, 1827.

To the Benares Court of Circuit, dated the 31st August, 1827.

No. 458.

ISIS.
Reg. VIII.

The Court of Nizamut Adawlut direct me to forward to you the accompanying copy of a letter from the acting magistrate of the city, dated the 26th ultimo, submitting for their opinion the following questions : *first*, whether a judge of circuit, holding a city sessions, can call for any security case (for the term of one year or less) not decided by the magistrate in the month immediately preceding his sessions, and consequently not mentioned in the statement furnished to him by the magistrate, on or without a petition being presented by the prisoner; the prisoner not having petitioned the judge at the sessions following the order for his furnishing security, and the judge not having called for the case on reviewing the statement ? *Secondly*, can the court at large receive a petition, appealing from a magistrate's order for security, and call for proceedings ?

2. In reply, I am desired to communicate to you the opinion of the Court, that the revision of a judge of circuit is not restricted to cases in which the magistrate has passed orders for security since the sessions immediately preceding, and consequently that he is at liberty, on or without a petition, to call for and pass orders on the case of any security prisoner confined by the magistrate, relative to whom the preceding judge may not have already recorded an order.

3. In reply to the second question, I am directed to state, that under the existing regulations, a person sentenced to imprisonment by a magistrate, on failure of furnishing specific security required by the magistrate, has an appeal to the court of circuit collectively, and that the cognizance of his case does not rest solely with the individual judge of circuit who may visit the station at which he is confined. The ground of this opinion of the Court is, that nothing short of a distinct and positive enactment to that effect can deprive any person, or description of persons, of the general right of petitioning immediately against any order by which the petitioner may deem himself aggrieved, and that in the provisions of Regulation VIII. 1818, the Court can discover no such enactment.

4. This latter construction, you will observe, is at variance with that communicated to you in the third paragraph of my letter, dated the 10th of June, 1825,* which you will therefore be pleased to consider as superseded.

5. You will of course furnish the acting magistrate with a copy of this letter, for his information and guidance.

August 31, 1827.

* See No. 390, page 161.

No. 459.

1811
Reg VII.
Sec 5
1807
Reg. IX.
Sec. 19
1793
Reg IX.
Sec 10.
1803
Reg VI.
Sec 10

To the Benares Court of Circuit, dated the 31st August, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 18th of June last, submitting copies of correspondence passed between your court and the magistrate of Ghazeepore, in the case of Doorga, and requesting to know, whether, under Section 5, Regulation VII. of 1811, and Section 19, Regulation IX. of 1807, a magistrate is or is not authorized to sentence persons convicted of preferring malicious and unfounded charges to six months' imprisonment, and a fine of 200 rupees.

2. In reply, I am desired to acquaint you, that the Court entirely concur in the opinion you have expressed on the point referred, and that, on reference to former and subsequent enactments, the Court are of opinion that the construction cited by the magistrate should not be adhered to.

3. The Court are further of opinion, that according to the regulations as they now stand, a person guilty of the offence mentioned in Section 10, Regulation IX. 1793, and Section 10, Regulation VI. 1803, may be imprisoned for any period not exceeding six months, or fined in any sum not exceeding fifty rupees; or if he be a proprietor of land paying more than 10,000 rupees to Government, or of *ayma* land paying more than 500 rupees, or of rent-free land yielding more than 1,000 rupees per annum, in any sum not exceeding 200 rupees.

August 31, 1827.

No. 460.

1818.
Reg VIII.
Sec 3
1825
Reg. IV.
Sec. 4.

To the Benares Court of Circuit, dated the 31st August, 1827.

The Court of Nizamut Adawlut have had before them a letter from your fifth judge, dated the 25th ultimo, together with its English and Persian enclosures, reporting the jail delivery of the city of Benares, for the month of June last, and submitting for the consideration and orders of the Court the following queries, regarding the intent and meaning of Regulation VIII. 1818, and Regulation IV. 1825.

First. Clause 2, Section 8, Regulation VIII. 1818, providing, that it is not necessary to revise the proceedings and orders passed by a magistrate as defined in Section 8, unless a petition is prepared to the judge of circuit: is this to be construed into a prohibition to the circuit judge to call for the proceedings unless the petition is presented? and if the papers are called for, does the order of the judge of circuit obtain by his single opinion, or is it requisite, in revising the order, to have the concurring opinion of two judges?

Secondly. Supposing the person, who is required to find security, complies with the order to avoid the sentence of imprisonment, but objects to the grounds on which such a measure is considered necessary, is the appeal to be preferred to the court at large, or does it rest with the judge of circuit holding the sessions, to call for the proceedings, and pass his opinion on the merits of the case?

Thirdly. Supposing the judge of circuit holding the sessions in June shall look over the lists furnished by the city magistrate for May, and not having received any petition against the order passed by the magistrate at the time of holding the session, a petition shall be presented to the court, after the conclusion of the jail delivery, and the usual statements are forwarded to the Nizamut Adawlut, will it rest with the judge who has held the sessions to pass the order, or will it lie over for the judge of circuit holding the sessions of the ensuing month?

Fourthly. If a prisoner is confined in jail until he finds security, and shall not present a petition until two or three sessions have passed, is it competent to the judge holding the half-yearly sessions to call for the proceedings and pass his order on the case, or does lapse of time preclude his interference?

Fifth. Whether the orders of a magistrate, passed under the provisions of Regulation IV. 1825, empowering the *zillah* and city magistrates to take *moochukas* or penal recognizances for the maintenance of the peace, &c. are open to a general appeal, rather than depending on the arrival of the judge of circuit at the station at which they are passed?

2. In reply, the Court desire me to communicate to you the following instructions, for the information and guidance of your fifth judge.

First. A judge of circuit holding the sessions may call for any proceedings of a magistrate connected with a requisition of security without petition, and pass such orders thereon as he may deem just and proper, and in such cases it is not necessary that there should be the concurring opinion of two judges to reverse an order of the magistrate; a judge of circuit singly, while holding the sessions, having the power of the court of circuit collectively for this purpose.

Secondly. After an individual, from whom security has been demanded, has complied with the requisition, he is at liberty to prefer his petition to the court of circuit at the *sudder* station, or to the judge holding the sessions, who, however, is not competent to reverse or alter the order passed by the magistrate in such case, without obtaining the concurrence of one of his colleagues to that effect.

Thirdly. After a judge of circuit has concluded a jail-delivery at the station of a magistrate, and has dispatched to the Nizamut Adawlut his report on the completion thereof with the usual statements, he must be held to be divested of the powers of a judge of circuit holding the sessions so far as that station is concerned; consequently he is not then singly competent to pass an order for the release of a prisoner detained on requisition of security, and any petition presented by such prisoner, at that time, should either be preferred at the next sessions, or to the court of circuit at the *sudder* station: or a judge of circuit who has just concluded the sessions may make it up, and under the general powers vested in a single judge of circuit, may record his opinion thereon, transmitting it, if necessary, for the confirmation of one of his colleagues at the *sudder* station.

Fourthly. A judge of circuit holding the half-yearly sessions is competent to call for the proceedings in the case of a prisoner detained on requisition of security, although such prisoner may not have presented any petition for two or three sessions after the order for his confinement.

Fifthly. Section 4, Regulation IV. 1825, should not be construed to preclude an individual in confinement for security under the provisions of that rule from preferring an appeal to the court of circuit at the *sudder* station, when no order may have been passed on his case by the judge of circuit at the sessions of jail-delivery preceding; and the judges of the court at the *sudder* station are competent to pass such orders thereon, under the general regulations relative to appeals, as may appear in their judgment to be just and equitable.

August 31, 1827.

No. 461.

1819
Reg. VIII.
Sec. 8*To the Judge of Zillah Jessore, dated the 7th September, 1827.*

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th of May last, requesting their opinion on the construction of Section 8, Regulation VIII. 1819, as to the following points:

First. Whither the *zemindars*, entitled to obtain periodical sales of certain descriptions of tenures for arrears of revenue under the above section and regulation, can transfer that right to their *ijaradars*, or whether the proprietor of an estate paying revenue direct to Government, is debarred from the advantages of Section 8, by the circumstance of having let his estate in farm.

Secondly. Should the opinion of the Court be in favour of the power of the *zemindar* to transfer his right of obtaining those sales to his farmer, you request to know whether the same right of transfer is to be considered as existing also in the *ijaradar*, in favour of a third party to whom he may have similarly under-let the estate.

2. In reply, I am desired to communicate to you the opinion of the Court, that a *zemindar* is not entitled to transfer to an *yaradar* his right of obtaining periodical sales of *putnee* tenures for arrears of revenue, under Regulation VIII. 1819, the individuals specified in the section above quoted, as entitled to apply for periodical sales, being proprietors under direct engagements with the Government. This construction involves of course a reply to your second question.

September 7, 1827.

No. 462.

1814.
Reg. I
Sec. 14, Cl. 1.*To the Officiating Commissioner of Zillah Cuttack, dated the 7th September, 1827.*

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 30th ultimo, stating, that a petition has lately been presented to you by a person claiming to succeed to one of the tributary *mehals*, the *peshkush* of which is 4,780 rupees 5 annas 12 gundas 2 cowries, and the produce of which is stated to be 1,02,000 rupees 4 annas 12 gundas; and requesting the opinion of the Court, as to whether the value of the estate sued for should be assumed at the *peshkush*, or at the estimated produce.

2. In reply, I am desired to communicate to you the opinion of the Court, that in conformity to the first clause of Section 14, Regulation I. 1814, the value of the property should be assumed at the *peshkush*, which may be held to be the amount of the annual *jumma* payable to Government. Such indeed appears to have been the construction already adopted by your court, as may be seen on reference to the *Dekcnul* case, filed on the 17th of October 1816, and decided in this Court in March, 1825.

September 7, 1827.

No. 463.

1821.
Reg. II
Sec. 5, Cl. 3*To the Judge of Zillah Tipperah, dated the 12th October, 1827.*

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th ultimo, bringing to notice a practice which prevails in your district, and soliciting the Court's construction of clause 3, Section 5, Regulation II. 1821.

2. In reply, I am desired to communicate to you the opinion of the Court, that the construction adopted by the *sudder ameens* attached to your court is correct, and

that it was not intended that parties in suits referred to these authorities should be subjected to the expense of stamp paper, though the amount or value of the property in dispute should exceed 150 rupees.*

October 12, 1827.

To the Magistrate of Zillah Burdwan, dated the 30th November, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 24th instant, requesting to be informed, whether the offence of selling counterfeit gold mohurs (much defaced) for bullion, knowing the same to be counterfeit, would come under the provisions of clause 1, Section 10, Regulation XVII. 1817.

No. 464.
1817
Reg XVII Sec. 10
Cl. 1.

2. In reply, I am desired to communicate to you the opinion of the Court, that the act of the seller in the case put by you, (though unquestionably a fraud, and punishable as such under the general regulations, and the provisions of the Mahomedan law,) cannot be held to fall within the specific rule cited by you, inasmuch as the offence of "selling" counterfeit coin as bullion cannot, by any construction, be made to signify the offence of "paying or tendering in payment," which are the terms used in the rule in question.

3. The Court at the same time concur in the opinion expressed by you in the 2nd paragraph of your letter, that the penalties provided in the 11th Section of the same Regulation would be applicable to the case.

November 30, 1827.

To the Calcutta Court of Appeal, dated the 7th December, 1827.

The Court of Sudder Dewanny Adawlut have had before them your two letters with their respective enclosures, dated the 16th and 22nd ultimo, relative to the fine imposed by the judge of Burdwan, on an individual named Ramruttun Bose.

No. 465.
1793.
Reg. IV. Sec 6

2. In reply to the question involved in your reference, namely, as to the propriety or otherwise of imposing a fine on a witness, on whom a *subpœna* may not have been served, I am desired to state, that the Court see no reason to depart from the construction laid down in their letter to the commissioner at Moorshedabad, dated the 27th of July, 1814,† that the rules contained in Section 6, Regulation IV. 1793, cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served.

3. You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and future guidance.

December 7, 1827.

To the Patna Court of Circuit, dated the 21st December, 1827.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, stating your objections to a practice which exists amongst the magistrates of your division, of sentencing the receivers of stolen property to a more severe punishment than that

No. 466.
1818
Reg XII. Sec. 4.

* Superseded by Regulation X. of 1829, Schedule B. Art. 9.

† See construction of this date, No. 172, page 53

which they award to the thief, and requesting the Court to pass an opinion as to the correctness of the construction put by you on the rule contained in Section 4, Regulation XII. 1818.

2. In reply, I am desired to acquaint you, that the Court are not prepared to narrow the discretion confined to the magistrates by the rule in question, as the offence of receiving stolen property admits of so many shades of difference, that it would be impracticable to define, with any degree of accuracy, under what circumstances a case of that description shall be considered to be of an aggravated nature or otherwise.

December 21, 1827.

No. 467.

1805
Reg. II Sec. 4,
Cl. I
1812
Reg. V
Secs. 17 and 20.

To the Judge of Zillah 24-Pergunnahs, dated the 25th January, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 17th instant, requesting their opinion as to the period in which it is incumbent on a *yot's* farmer, or dependent *talookdar*, to institute a suit under the provisions of Section 17, Regulation V. 1812.

2. In reply, I am desired to communicate to you the opinion of the Court, that a suit of the nature in question should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale, conformably to the rules contained in Section 20 of the above cited regulation, and clause 1, Section 4, Regulation II. 1805.

January 25, 1828.

No. 468.

1818
Reg. XII.

To the Benares Court of Circuit, dated the 8th February, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, with its enclosure from the acting magistrate of the southern division of Bundelcund, requesting to be informed whether, under the existing regulations, he is authorized to inflict the full punishment of two years' imprisonment on Musst. Phoolea, convicted of theft, on the ground of her having been twice before convicted, and appearing to be an incorrigible thief.

2. In reply, I am desired to acquaint you, that a sentence of two years' imprisonment may be passed by the acting magistrate in a case of the above nature.

3. You will be pleased to furnish the acting magistrate with a copy of the above opinion for his information and guidance.

February 8, 1828.

No. 469.

1822.
Reg. XI. Sec. 28,
Cl. 4.

From the Acting Judge of Zillah Jessore, dated the 5th January, 1828.

I request you will have the goodness to obtain for me the opinion of the Court of Sudder Dewanny Adawlut on the intent and spirit of clause 4, Section 28, Regulation XI. of 1822. It is there specified, that "If any other person, not being the late possessor of "the *estate sold*," on account of balance of revenue, "shall claim or assert an interest in any "portion of the land delivered to the purchaser, on the plea, that whether included in the "sale or not, it formed no part of the property liable for the Government revenue assessed "on the *mehal sold*, he shall be at liberty to institute a suit for the recovery thereof jointly "against the former possessor of the *mehal sold* and the purchaser."

First. I request to be informed whether such suit, under this clause, shall be decided by a summary or miscellaneous investigation, or whether such claimant must have recourse to a regular suit to recover his claim.

Secondly. When an estate has been sold on account of the public revenue, and the collector has not been able to give possession to the purchaser, from the circumstance of parties asserting a claim to a portion of the land sold, on the plea that it formed no part of it in any way, and consequently the collector has applied by a proceeding to the civil court to put the purchaser in possession, under clause 1, Section 28 of this Regulation : I am desirous of being informed, if a petition should be presented to the judge, previous to his complying with the collector's request, he is at liberty, under the spirit of clause 4, Section 28 of this Regulation, summarily to ascertain the rights of the respective parties, and award possession accordingly ; or whether he is compelled to carry the collector's request into execution without listening to the petition of the claimant, leaving him to prosecute his demand by a regular suit.

2. A case similar to the above is now pending before me, and as this clause is not sufficiently explicit, I have deferred complying with the collector's requisition, till I have first obtained the opinion of the Court of Sudder Dewanny Adawlut. The case is simply this : The estate of A was sold on account of balance of public revenue ; B became the purchaser, and the collector could not put B in possession, because C, the proprietor of an adjoining estate, came forward and stated his claim to a *mozafat* as belonging to his estate, which had been sold with the estate of A. The collector decided that it belonged to the estate of A, because it was so written in his office so far back as 30 years, but C has proved his possession to this *mozafat* since the year 1801, by various documents, and there is no doubt of the circumstance. The question therefore ensues, Is C to be ousted from this *mozafat*, after retaining undisturbed possession for 25 or 26 years, on the proceeding of the collector, because it might have appertained to the estate of A previous to that time ? or is the judge at liberty summarily to ascertain the respective right to possession of A and C, and decide accordingly ? Surely the spirit and intent of this clause could never have been intended to convey the meaning, that a person situated as C, (in possession for 25 or 26 years), should only have redress by a regular suit. It does not appear in this case that the collector has been invested with any of the powers of commmissioner, as specified in clause 2, Section 28 of this Regulation, which induced him to determine the right of A to this *mozafat*, and consequently the right of B to possession as purchaser.

To the Acting Judge of Zilluh Jessore, in reply to the above, dated the 8th February, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 5th ultimo, requesting their opinion as to the proper construction of clause 4, Section 28, Regulation XI. of 1822.

2. In reply to your first question, as to whether a suit instituted under the clause above-mentioned, should be decided by a summary or miscellaneous investigation, or whether recourse should be had to a regular suit, I am desired to communicate to you the opinion of the Court, that such suit should be regular.

With reference to your second question, I am desired to acquaint you that you should exercise your own discretion, and proceed in such mode as you may deem conformable to the regulations, leaving any party who may be dissatisfied to sue for his remedy by a summary appeal to the provincial court.

February 8, 1828.

No. 470.

1814
Reg. XXVI Sec. 3,
Cl. 8 and 9.

To the Calcutta Court of Appeal, dated the 22d February, 1828.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting for the Court's consideration, copies of a letter from the judge of Budwan, and of the decrees passed by him and the *zillah* court in the case of Chytun Chowdrie, appellant, *versus* Kartick Churn Sirca, respondent, and requesting the Court's opinion thereon.

2. In this case it appears, that Mr. Millett calls in question the legality of the judgment of your court, upon the ground of its not being in conformity with the intent and meaning of Section 3, Regulation XXVI. 1814, the 8th and 9th clauses of which section, he thinks, render it incompetent to a provincial court of appeal to pass a conditional reversal of an appeal from the decision of a *zillah* judge.

3. In reply, I am desired to acquaint you, that the Court see no objection to your order in the abstract, and that, had the judge omitted to issue the notice required by the Court's circular letter, dated the 5th of November 1812, or, the appellant having attended under it, had he refused to hear what the party might have had to allege in excuse for his default, an order from your court, directing the judge to hear the excuse, and if it proved sufficient, to restore the case to the file, would appear to be entirely unobjectionable.

4. I am at the same time desired to observe, that the Court do not by this construction intend at all to interfere with the particular case out of which the reference originated.

5. You will be pleased to furnish Mr. Millett with a copy of this letter for his information and guidance.

February 22, 1828.

No. 471.

1819
Reg. X. Sec. 67.

To the Acting Judge of Zillah 24-Pergunnahs, dated the 22nd February, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, and its enclosures, submitting the case of certain individuals seized with illicit salt, and soliciting the opinion of the Court, relative to the intent and meaning of Section 67, Regulation X. 1819.

2. In reply, I am desired to acquaint you, that the Court are disposed to be of opinion, that under the rule above cited, the fine should be in proportion to the quantity of illicit salt seized, and not according to the number of persons engaged in the illicit transaction.

3. Your are not however to consider this construction as operating to prevent the exercise of your own discretion, or to exempt you from an adherence, in the particular case, to the rules prescribed for your guidance in the regulation cited by you.*

February 22, 1828.

* See No. 294, page 210.

To the Acting Judge of Zillah Shahabad, dated the 22nd February, 1827.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 8th instant, requesting the Court's opinion on a point connected with Regulation VI. 1813; the defendant in a civil process for the summary execution of an award of arbitration under the provisions of Section 3 of the above-mentioned regulation, having put in a plea, that the provisions of the section and regulation above quoted exclusively provide for awards respecting lands and rights dependent on them, and that an award for debts, disputed accounts, and partnership, &c. is not cognizable under that regulation.

2. In reply, I am desired to communicate to you the opinion of the Court, that Regulation VI. 1813, as appears from its preamble relates exclusively to contests and suits respecting lands, and is inapplicable to other matters.

February 22, 1828.

To the Calcutta Court of Appeal, dated the 22nd February, 1828.

The Court of Sudder Dewanny Adawlut have had before them a letter from your fifth (now fourth) judge, dated the 8th instant, with its enclosures, submitting sundry papers in the cases of Lalchand *versus* Ramruttun Dutt, and Rajchunder *versus* Kumla-kaunt Chund, and requesting the Court's opinion, as to whether, in a case of appeal, when a *vakeel* is present, it is necessary or not, previously to dismissing the suit on default, to issue a written notice to the party himself, calling upon him to shew cause for not having proceeded in his appeal.

2. In reply, I am desired to communicate to you the opinion of the Court, that such notice is not necessary in a case in which a *vakeel* is present.

February 22, 1828.

To the Acting Magistrate of Zillah Rungpore, dated the 22nd February, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, with its inclosed copy of a letter from the commissioner of Rungpore, requesting the Court's permission to transfer the case of Mahomed Ali, charged with cutting off the nose and ear of an Assamese boy, from Rungpore to Gwalpara.

2. In reply, I am desired to acquaint you, that the Court cannot sanction the measure recommended, Gwalpara being a place to which the general regulations of Government do not extend, and not being one of those stations contemplated in the provisions of Regulation VIII. 1822.

February 22, 1828.

To the Judge of Zillah Ghazepore, dated the 7th March, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th ultimo, submitting a copy of the proceedings of this Court relative to certain opium cultivators in your district, with copy of a letter from the Secretary to Government in the Territorial Department, and requesting, under the circumstances stated by you, that the Court would reconsider their orders.

No. 472.

¹⁸¹³
Reg VI.

No. 473.

¹⁷⁹³
Reg V. Sec 7.

No. 474.

¹⁸²²
Reg VIII.

No. 475.

¹⁸¹³
Reg VI.
¹⁸²⁴
Reg XV.
¹⁷⁹³
Reg XLIX.
¹⁸¹⁹
Reg. VIII.
Sec. 18, Cl 5

2. In reply, I am desired to forward to you, for your information and guidance, the accompanying copy of a letter, under date the 2d of March 1827,* written by order of this Court to the Patna court of appeal, which letter, as you will perceive, contains the construction which, in the opinion of this Court, should be put upon the provisions of Regulation VI. 1813, when considered with relation to those of Regulation XV. 1824.

3. I am further directed to furnish you with the accompanying copy of a letter to the address of the Patna court of circuit, dated the 13th of July 1827,† shewing the description of suits which, in the opinion of the Court, are properly cognizable under the provisions of Regulation XV. 1824.

4. With reference to your remark, that if without restraint of property an ejectment has actually taken place, in consequence of the *ryot* being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the *zemindar*, you cannot discern to whom the investigation of such a case would belong; I am desired to communicate to you the opinion of the Court, that either the rules of Regulation XLIX. 1793, or those of Regulation VIII. 1819, would be applicable; the former where the dispossess may have been effected by force, and the latter where these means may not have been resorted to.

5. The declaration contained in the fifth clause of Section 18, Regulation VIII. 1819, that it is illegal to oust or disturb resident cultivators, unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule; and the Court are of opinion, that in the spirit of the enactment cited, such remedy should be afforded by the judge on the summary application of the ejected *ryot*, by an order for his being restored to possession, and his retaining it until the process prescribed by the regulation shall have been observed.

March 7, 1828.

No. 476.
1810.
Reg. IX. Sec. 38.
1819
Reg. X.

To the Joint Magistrate of Barasut, dated the 8th April, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 28th ultimo, requesting their opinion, as to whether the provisions of Section 38, Regulation IX. 1810, can be considered applicable to native officers in the salt department.

2. In reply, I am desired to communicate to you the opinion of the Court, that those provisions cannot be considered applicable, and that, although there do not appear to be any corresponding provisions in Regulation X. 1819, (which relates to the salt department,) yet that officers in that department are of course amenable to justice for acts of extortion, under the general regulations.

April 8, 1828.

No. 477.
1814.
Reg. XXIII.
Secs. 46 and 73.

To the Judge of Zillah Shahabad, dated the 8th April, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th ultimo, together with its enclosed copy of your Persian proceedings in the case of Bhichook Pandee *versus* Hurrukh Pandee and others, requesting the Court's permission to

* See construction of this date, page 187, No. 444.

† See construction of this date, page 191, No. 453.

admit a summary appeal from the decision of the *sudder ameen* in the above case, though the proper time for appealing has elapsed.

2. In reply, I am desired to acquaint you, that this reference was wholly unnecessary, inasmuch as by Sections 46 and 73, Regulation XXIII. 1814, you are vested with discretionary power to admit an appeal from the decision of a *sudder ameen*, although the petition may not be presented within the prescribed period, if the appellant shall show satisfactory cause for not having before presented the petition.

April 18, 1828.

To the Judge of Zillah Gorukhpore, dated the 18th April, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting their opinion, as to whether the prohibition set forth in the latter part of clause 3, Section 18, Regulation II. 1803, against hearing suits for private claims, has been superseded by the provisions of Regulation II. 1805.

2. In reply, I am desired to communicate to you the opinion of the Court, that notwithstanding the mention of the period of 60 years in the regulation last cited, no claim can now be heard which had its origin beyond the date of the cession, and this without any reference to the mode in which the possession may have been, or may be alleged to have been acquired; and that consequently the rule contained in clause 3, Section 18, Regulation II. 1803, remains in full force.

April 18, 1828.

To the Calcutta Court of Appeal, dated the 18th April, 1828.

The Court of Sudder Dewanny Adawlut have had before them a letter from your third judge, dated the 25th ultimo, submitting, at the request of the judge of *zillah* Burdwan, for the consideration and orders of this Court, certain documents connected with the case of the Rajah of Burdwan, *versus* Nubkissore Chatoorjea.

2. The reference now submitted involves, the Court observe, two questions. *First*, as to whether a judge is competent, under Section 2, Regulation X. 1796, to offer any objection to an order of a provincial court in the shape of a decree; and *secondly*, whether in cases of default, the vacation should be deducted in calculating the time allowed for the performance of any act.

3. On the first point, I am directed to communicate to you the opinion of the Court, that the regulation above cited was only intended to apply to difference of opinion relative to the proper construction of regulations in miscellaneous matters, and not to the provisions of a decree, the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the regulations.

4. On the subject of deducting established holidays, I am directed to forward to you the accompanying copy of an opinion delivered by the Court on the 24th of February, 1816, in favour of making such deduction in calculating the period allowed for preferring appeals, when the period of appealing may expire during an adjournment of the Court; and

No. 478.

1803.
Reg. II Sec. 18,
Cl. 3.
1805.
Reg. II.

No. 479.

1796
Reg. X. Sec. 2.

to acquaint you, that the same rule should be applied to cases of default of any other description.*

5. You will be pleased to furnish the judge of Burdwan with a copy of this letter for his information and guidance.

April 18, 1828.

No. 480.

1793
Reg. VIII
Sec. 51, Cl. 2.
Sec. 63, Cl. 1.
1821
Reg. II, Sec. 4
1814.
Reg. XXIII.
Sec. 13, Cl. 1.

To the Judge of Zillah Jungle Meahuls, dated the 19th April, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 31st ultimo, requesting their opinion on the following points.

First. Is it competent to a *moonsiff* to receive, try, and decide suits for the recovery of rent, or other claim arising from land or other real property, not being a claim to the actual right and title to hold the land or other real property?

Secondly. Is it competent to a *moonsiff* to receive, try, and decide suits brought to recover the penalties leviable from a *zemindar*, *taloochdar*, or other person, entitled to receive rent, under clause 2, Section 51, and clause 1, Section 63, Regulation VIII. 1793, for undue exaction of rent, or for a refusal to grant a *dakheleh* or receipt for rent paid?

Thirdly. Is it competent to a *moonsiff* to receive, try, and decide suits brought by a tenant to compel a *zemindar*, *taloochdar*, or other person, entitled to receive rent, to refund a sum of money unjustly extorted as rent, or to prove the payment of a sum of money as rent for which no *dakheleh* or receipt has been granted, provided the tenant do not sue at the same time to receive the penalty alluded to in the clauses quoted in the second question?

2. On the first point, namely, the competency of *moonsiffs* to try suits for rent, I am desired to call your attention to Section 4, Regulation II. 1821, the provisions of which you seem to have overlooked, and which expressly authorize the trial of suits for rent by the *moonsiffs*.

3. On the second point the Court observe, that the penalties alluded to in the clauses quoted in the second question are not of the nature of personal damages, such as the *moonsiffs* are prohibited from trying by the concluding part of clause 1, Section 13, Regulation XXIII. 1814, and consequently that there does not appear to be any objection to the institution of suits for the recovery of such penalties in the courts of the *moonsiffs*. The foregoing reply renders unnecessary any observation on the third point submitted to you.

April 19, 1828.

No. 481.

1814.
Reg. XXIII.

To the Judge of Zillah Beerbhoom, dated the 2nd May, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, requesting the Court's instructions as to the competency of a *moonsiff* to try and determine three several suits between the same parties, the case being the sum of 150 rupees for each of which sum bonds were given on the same day.

2. In reply, I am desired to acquaint you, that there does not appear to be any rule in Regulation XXIII. of 1814, or other enactment, which can be held to prohibit the cognizance of such suits by a *moonsiff*.

May 2, 1828.

* See C. O. S. D. A. 7th Feb. 1821, No. 25, p. 23, Vol. II. Baptist Mission Press Edition.

To the Judge of Zillah Ghazeepore, dated the 9th May, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd ultimo, requesting, under the circumstances therein stated, a further construction of the Court with regard to the provisions of Regulation XV. 1824.

2. In reply, I am desired to acquaint you that the regulation in question has been held to be not applicable to disputes relative to the right of cultivation only, and the Court are of opinion, that all differences between landholders and their tenants or *ryots*, involving the question, whether the landholder can legally oust the tenant or *ryots* from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation XLIX. 1793, or Regulation VIII. 1819.

May 9, 1828.

To the Judge of Zillah Jessore, dated the 23rd May, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting their opinion on certain points connected with the construction of Regulation X. 1819.

2. In reply to your first question, I am desired to communicate to you the opinion of the Court, that in cases forwarded to the judge by the salt officers, under the 113th Section of the enactment above quoted, regarding illicit manufacture of salt, &c. the person accused is at liberty to employ a *vakeel*, and to put in a written defence, if he deem that course preferable to pleading personally; and that such written defence should be on stamp paper of the value prescribed for miscellaneous petitions presented in the judge's court.

3. On the second point, I am directed to observe, that the regulation apparently does not provide for cases wherein the defendants are absent or against whom the agent has recorded his opinion of guilty *ex parte*; its provisions being confined to an indication of the course of proceeding to be followed by the judge where the person of the defendant is produced; but that it is, of course, the duty of the judge to assist the agent in his endeavours to apprehend any offender, who may have evaded or resisted his process.

4. As to the meaning of the 104th Section, I am desired to communicate to you the opinion of the Court, that it gives the same powers for the apprehension of those charged by the agent to those officers, as the magistrates are authorized to use; in as much as the general magisterial powers, vested in the agents by the section cited, do not appear to be limited by any other provision of the enactment.

May 23, 1828.

*Letter from the Officiating Judge of the Moorshedabad Court of Circuit at Rungpore,
dated the 15th May, 1828.*

I have the honor to acknowledge the receipt of an extract from the proceedings of the Nizamut Adawlut, under date the 26th April last, observing, that I have stated my concurrence with the *futwa* of the law officer convicting Zuhra Roy and three others of *dacoity*, but that I have not passed sentence on them, apparently because I differed from the *futwa* acquitting a fifth prisoner; and directing me to pass sentence under the Regu-

No. 482.

1824.

Reg. XV.

1793

Reg. XLIX.

1819

Reg. VIII

No. 483.

1819

Reg. X.

Secs. 104 and 113.

No. 484.

1793

Reg. IX Sec. 53.

1811

Reg. I Sec. 5.

1803

Reg. LIII.

Sec. 6, Cl. 2.

lations on the four prisoners in question, suspending the execution thereof on account of the reference regarding the fifth prisoner.

2. Previously to carrying the above order into effect, I beg most respectfully to submit that it appears to me, from Section 53, Regulation IX. 1793, and Section 5, Regulation I. 1811, that a judge of circuit, in cases similar to that already quoted, is precluded from passing any order, but directed to transmit the proceedings on the trial, with his opinion thereupon, for the final sentence of the Nizamut Adawlut.

To the Officiating Judge of Moorshedabad Court of Circuit at Rungpore, in reply to the above, dated the 6th June, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 15th ultimo, stating in reply to the Court's orders of the 26th April last, the opinion you entertain as to your incompetency to pass sentence on the prisoner Zuhra Roy and others, under the provisions of Section 53, Regulation IX. 1793, and Section 5, Regulation I. 1811.

2. In reply, I am desired to communicate to you the opinion of the Court, that under the regulations at large, and particularly with reference to clause 2, Section 6, Regulation LIII. 1803, you are required to pass sentence, as directed in the Court's proceeding under date the 26th of April last; and that the rules quoted by you can be deemed applicable to those prisoners only, with regard to whose guilt you may differ from your law officer.

June 6, 1828.

No. 485.

1808.

Reg. IX. Sec. 13.

To the Magistrate of Zillah Sylhet, dated the 4th July, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 11th ultimo, requesting their opinion on the following point:

Is a magistrate authorized to sentence a person convicted of withholding information of a murder, to both fine and imprisonment, to the extent specified in Section 13, Regulation IX. of 1808, or simply to fine, commutable, if not paid, to imprisonment, within the specified limits?

2. In reply, I am desired to acquaint you, that, in the opinion of the Court, on conviction of the offence in question, the punishment should not exceed a fine of 200 rupees, commutable, if not paid, to imprisonment for six months.

July 4, 1828.

No. 486.

1826.

Reg. III. Sec. 4.

To the Magistrate of Zillah Beerbhum, dated the 15th August, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 19th ultimo, stating, that an individual, sentenced to a term of imprisonment in the civil jail by the collector in a case of illicit opium, effected his escape, but has since been re-apprehended; and requesting the Court's instructions as to the manner in which you should notice the offence of that individual.

2. In reply, I am desired to observe for your information and guidance, that every escape must involve an attempt to escape; that in the case of the individual alluded to by you, his offence was more strictly an attempt to escape, he having been since re-apprehended; and that consequently he should be dealt with agreeably to the provisions laid down in Section 4 of Regulation III. 1826.

August 15, 1828.

To the Judge of Zillah Allahabad, dated the 12th September, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th ultimo, containing the following queries :

1st. Are the provisions of Regulation XXXIV. 1803, respecting the legal rate of interests, applicable to loans of grain as well as loans of money, or to the latter only ?

2nd. Can a witness, who has *evaded* the summons of a civil court, be proceeded against by *dustuk* and fine, supposing that no doubt exists, as to the summons having been carried by the serving *peada* to the actual residence of the witness, and all proper means used to serve it upon him ?

3rd. Whether any and what further measures are allowable to enforce the attendance of a witness, who, having been duly served with a summons, has neglected to attend, and *evades* the second process of *dustuk* issued against him ?

2. In reply to the first question, I am desired to communicate to you the opinion of the Court, that the provisions of the regulation above cited are applicable to loans of money only ; in reply to the second question, that a witness, upon whom a summons may not have been personally and actually served, cannot be proceeded against, either by *dustuk* or fine ; and in reply to the third question, that Section 6, Regulation IV. 1793, contains the proper rule of proceeding in such case, namely, the imposition of a fine not exceeding 500 rupees.

September 12, 1828.

To the Benares Court of Circuit, dated the 24th October, 1828.

The Court of Nizamut Adawlut have had before them your letter, under date the 27th ultimo, submitting for their consideration and orders, a copy of your correspondence with Mr. Currie, the acting magistrate of the city of Benares, relative to the construction of Section 5, Regulation VI. 1824.

2. In reply, I am desired to communicate to you the opinion of the Court, that the definition of an heinous offence, contained in the rule cited, applies only to the question of commitment, and that it cannot be held to supersede the rule contained in Section 3, Regulation XII. 1818, which authorizes the magistrate to pass a sentence of two years imprisonment on conviction of theft, where the offender may have been before convicted of the same offence, whatever may be the amount of the property taken in either case ; and that consequently Mr. Currie was justified in passing that order in the case which gave rise to the present reference.

3. You will be pleased to furnish the acting magistrate of the city with a copy of this letter for his information and future guidance.

October 24, 1828.

To the Acting Magistrate of Zillah Ghazeepore, dated the 12th December, 1828.

The Court of Nizamut Adawlut have had before them your letter, dated the 3rd of October last, and its enclosures, requesting the Court's construction of Section 23, Regulation IX. 1807, and submitting the following queries, viz.

No. 487.

1803.
Reg. XXXIV.
1793
Reg. IV. Sec. 6.

No. 488.

1824.
Reg. VI Sec. 5.
1818.
Reg. XII. Sec. 3.

No. 489.

1807
Reg. IX. Sec. 23.

1st. Whether the court of circuit is competent under Section 13, Regulation IX. 1807, or any other regulation in force, to suspend the execution of a magistrate's order, until the case be decided in appeal under any circumstances, excepting when two judges, after having examined the whole of the magistrate's proceeding, may be of opinion, that further evidence is required, and that the prisoners ought to be admitted to bail, until such additional evidence may be procured, and the magistrate pass a second order?

2ndly. Is the court competent to exercise this authority, previous to a perusal and consideration of the magistrate's proceedings, and release upon bail prisoners sentenced to imprisonment, on conviction of affrays and other offences, either singly or collectively?

2. In reply, I am directed to answer both the above queries in the affirmative, and to communicate to you the opinion of the Court, that two judges of a court of circuit are at all times competent to direct a magistrate to suspend the execution of his order, and to direct the release of a prisoner on bail, when justice may appear to require that measure, whether they may or may not have examined the proceedings of the magistrate on which such order was founded.

December 12, 1828.

No. 490.

1825.
Reg. II.

To the Moorshedabad Court of Appeal, dated the 15th December, 1828.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 22d ultimo, suggesting under the circumstances therein stated, that a section and clause should be added to Regulation II. 1825.

In reply, I am desired to communicate to you the opinion of the Court, that the suggested addition to the enactment cited, does not appear to be necessary; and to observe, that the enhanced cost attending the presentation of a petition after a lapse of three months, is merely with reference to such delay, and the probable inconveniences that may attend it; and the Court, to whom the petition for a review may be presented, is competent to reject it on any ground; it not being requisite, according to the rule contained in clause 2, Section 4, Regulation XXVI. 1814, to admit a review, unless the parties preferring applications for the same shall be able to shew just and reasonable ground to the satisfaction of the court, for not having preferred such application within the limited period.

December 15, 1828.

No. 491.

1819
Reg VIII Sec 17,
Cl. 2.

To the Judge of Zillah Jungle Mehals, dated the 9th January, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 29th ultimo, stating, that under the provisions of Regulation VIII. 1819, a *putnee talook* was sold by you on the 11th of December for 3,225 rupees, and the required deposit of 15 per cent. made; that as the balance was not paid, the lot was again sold on the 20th of December for 2,468 rupees, and the required deposit of 15 per cent. paid; but, that the balance of the purchase money remaining unliquidated, the *talook* was again put up to sale on the 29th of December, and purchased by the *zemindar* for 1,700 rupees: and, under these circumstances, requesting the opinion of the Court, as to whether the commission of one per cent. payable for the use of Government, under the provisions of clause 2, Section 17, Regulation VIII. 1819, should be levied on the sums for which the lot was knocked down

on the several days of sale, or merely on the deposits of 15 per cent. made on the first two days, and on the amount for which the lot was finally sold to the *zemindar*.

In reply, I am desired to inform you, that the commission in question should be levied only on the net proceeds of the sale whatever that may be ; the several deposits of fifteen per cent. (together with the difference between the first, second, and third sale, claimable from the first and second purchasers, if any sum on this account should have been realized,) being reckoned as part of the gross proceeds.

January 9, 1829.

To the Judge of Zillah Jungle Mehal, dated the 9th January, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 2nd instant, requesting to be informed whether the provisions of the fifth clause of Section 10, Regulation III. 1828, are applicable to appeals from all decisions of the revenue authorities, declaring land heretofore held on a rent free tenure liable to assessment ; or merely to appeals from decisions which award to Government the right to resume and assess such land.

2. In reply, I am desired to communicate to you the opinion of the Court, that the fifth clause of the section cited is clearly applicable only to appeals from decisions of the Boards of Revenue, or, in other words, only to appeals from decisions which affect the rights of Government.

January 9, 1829.

To the Judge of Zillah Cawnpore, dated the 30th January, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting their opinion on the following points :

1st. Whether the circular order, dated 22d September, 1826, has reference to the bond alluded to in Section 3, Regulation XVIII. of 1803, as well as to the bond of arbitration referred to in Section 7 of the same regulation ?

2nd. If to both, whether such bonds, being on plain paper, can be received as exhibits in a regular suit, notwithstanding the regulations to the contrary ?

3rd. If the bonds, alluded to above, shall not be filed in regular suits except on stamp paper, of what value shall such stamp paper be in case of both bonds ?

4th. For what amount is the obligation to be, in the case of the bond under Section 3rd? And, as in the case of the bond of arbitration required by Section 7, the amount of costs, &c. cannot be known until the suit has been decided, for what specific sum ought that bond to be ?

5th. As the bond, under Section 3, renders the party bound amenable to *zillah* courts in all suits brought by natives for a sum not exceeding 500 rupees, whether the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees.

6th. In the event of a suit having been instituted without a bond having been filed under Section 7, and in the absence of the bond required by Section 3, whether the judge is at liberty without further notice to nonsuit ? If not at liberty so to do, whether

No. 492.

1828.

Reg. III Sec. 10,
Cl 5.

No. 493.

1803.

Reg. XVIII.

Secs. 3 and 7.

1793

Reg. XXVIII.

Secs. 3 and 7.

a petition of plaint being presented, without copy of the bond required by Section 3, and without the original arbitration bond required by Section 7, the judge is to issue notice, or verbally to direct the party or his *vakeel* to enter the said documents within ten days, and on failure nonsuit?

2. In reply, I am desired to communicate to you the following instructions:

1st. In reply to your first question, the accompanying copy of a letter from the Advocate General, under date the 22nd of July 1814,^{*} will suffice to shew you, that it is unnecessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. of 1803.

2dly. In reply to your second, third, and fourth questions, the Court observe, that had not the provisions of Section 11, Regulation I. of 1814, been cancelled by Section 3, Regulation XVI. 1824, the value of the stamp required for the bond prescribed by Section 7, Regulation XVIII. 1803, would have been calculated according to the rule in question, it being easy to estimate the probable amount of costs in each case; but that, there being no existing rule for determining the value of security bonds for a specific amount, as explained in the Court's circular letter, dated the 22nd September 1826,[†] the security bond required under Section 7 should be on plain paper.[‡]

3rdly. In answer to your fifth question, I am desired to acquaint you, that the jurisdiction given by the 53d George III. C. 155, Section 107, over British subjects cannot be superseded by the rule cited, and that the courts are authorized to receive suits brought by or against a bounden party for sums greater than 500 rupees.

4thly. On the 6th question I am desired to observe, that you have already been informed of its not being necessary to require the execution of the bond alluded to in Section 3, Regulation XVIII. 1803, and that in the event of plaint being presented to you unaccompanied by the bond prescribed by Section 7, you are authorized to reject it, intimating to the plaintiff or his *vakeel*, either verbally or by a written notice, the necessity of executing such bond; but that you should admit the suit, on the plaint being reproduced accompanied by the requisite document.

January 30, 1829.

No. 494.

1824
Reg. VII Sec. 18.
1819.
Reg. X.

To the Secretary to Government in the Judicial Department, dated the 20th February, 1829.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 10th instant, with its annexed extract from the proceedings of Government in the Territorial Department, under date the 30th ultimo, communicated for the Court's construction of clause 4, Section 18, Regulation VII. 1824.

2. With respect to the first point noticed in the letter from the Board of Revenue in the lower provinces, I am desired to state, for the information of the Right Honourable

* See note Construction No. 174, page 54.

† See Construction No. 481, page 181, and C. O. S. D. A. No. 88, part 2nd, page 98.

‡ See however Regulation X. 1829, Schedule B.

the Governor, General in Council, that the Court concur in the opinion expressed by the Board of Revenue in the central provinces, namely, that the penalty prescribed by clause 4, Section 18, Regulation VII. 1824, cannot, in any case, exceed 500 rupees, whether there be one or more persons convicted of illicit dealing. I am directed to submit at the same time, the accompanying copy of a construction, dated the 22nd of February last,* given by the Court on the same principle, on a reference from the 24-pergunnahs, concerning the provisions of Regulation X. 1819.

3. With respect to the second point, on which there is a difference of opinion among the members of the Board, the Court cannot concur in either of the opinions expressed by them; and in the case put, where the opium forfeited is worth 200 rupees, and the individuals convicted of illicit dealing are four in number, the Court conceive that each individual would be liable to be amerced in the sum of seventy-five rupees to make up, with the value of opium forfeited, the total amount prescribed, namely, 500 rupees.

February 20, 1829.

To the Judge of Zillah Dinaugore, dated the 27th February, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th instant, requesting their opinion as to whether a suit, instituted fourteen years subsequent to the date of a *moonsiff's* decree, is subject to the limitations prescribed by Section 14, Regulation III. 1793.

In reply, I am desired to acquaint you, that the cause of action in the case in question must be held to have arisen on the expiration of one year after the date of the decree, and that this Court are not aware of any sufficient reason for excepting the case from the general rule furnished in the section above cited, by which you should be guided accordingly, leaving the party dissatisfied to appeal from your judgment in the ordinary course; and consequently, a suit instituted for the execution of a decree, fourteen years after the date of it, unless satisfactory cause can be shown for the delay, is inadmissible under the rule above cited.

February 27, 1829.

To the Judge of Zillah Tipperah, dated the 13th March, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that in clause 4, Section 18, Regulation VIII. of 1819, it is laid down, that "no summary award for arrears shall be considered to warrant the subjecting real property belonging to the defendant, in such an action, to sale in execution;" but in Section 5, Regulation XIV. of 1824, it is enacted, that "the award shall be executed by the judge under the usual process of the civil court;" and, under these circumstances, requesting to be informed, whether real property can be sold in realization of a summary decree of Regulation VII. 1799.

No. 495.

1793
Reg III. Sec. 14.

No. 496.

1819
Reg VIII
Sec 18, Cl. 4.
1824
Reg. XIV Sec. 5.
1799
Reg VII.

* See Construction No. 471, page 200.

2. In reply, I am desired to refer you to the words "consistently with the Regulations," contained in Section 5, Regulation XIV. of 1824, and to acquaint you, that the rule in question does not supersede the former provision cited by you, and consequently that real property cannot be sold in execution of a summary decree.

March 13, 1829.

No. 497.
1810.
Reg. XIII Sec. 2,
Cl. 4.

Mr. Walpole, in his capacity of *zillah* judge, passed a decree in favour of A, for possession of certain lands with *wasilaat*. This decree was appealed to, and confirmed by, the provincial court. Previous to the execution of the decree, Mr. Walpole was promoted to the court of appeal, and when the decree was about to be executed, a question arose as to the *quantum* of *wasilaat* to be granted. From the order passed by the *zillah* judge as to this question, an appeal was preferred to the Calcutta court of appeal, of which Mr. Walpole had become a member. It thus became a doubt, whether or not Mr. Walpole was competent, with reference to clause 4, Section 2, Regulation XIII. 1810, to give an opinion in the case. The Court of Sudder Dewanny Adawlut however ruled, that Mr. Walpole was competent, the order appealed from as to the *quantum* of *wasilaat* not having been passed by him, and the question for decision not being one on which he had before recorded an opinion.

March 13, 1829.

No. 498.
1825
Reg XX. Sec. 4,
Cl. 4.

Letter from the Judge of Zillah Cawnpore, dated the 2nd March, 1829.

It appears that the rule of this court, hitherto, has been to receive any and every suit for sums even less than 200 rupees, against residents of cantonments, and these suits have, in the general course, been made over to the law officers as under 500 rupees; the consequence has been that, in one instance lately, the military authorities declined aiding the execution of a writ, even after judgment, on the ground that the case was not cognizable in the civil courts, as being under 400 rupees.

2. The present case is Fukhuroodeen Hyder *versus* Duhan, a shop-keeper residing in cantonment, in which judgment went against defendant in the *pundit's* court, the cause of action being 155 rupees: I therefore request to know whether the execution shall be stopped, on the ground of the incompetency of the court to hear and try it, and the holder of the decree be referred to the military authorities; or whether I shall review the *pundit's* decision.

3. It appears to me that there are two rules in these cases; one, for European British subjects registered as attached to *bazars* and residing in cantonments, British soldiers, officers, *et cetera*; and the second for European foreigners, native soldiers, natives, *et cetera*, registered and residing in cantonments: that with regard to the first, the 4th of Geo. IV. is to be our guide, and 400 rupees the limit: with regard to the second, Section 22 of Regulation XX. of 1810, and 200 rupees the limit; and I request to be informed, whether I am right, as I shall put a stop to filing of suits, except the parties conform to Section 24, Regulation XX. of 1810.

To the Judge of Sillah Cawnpore, in reply to the above, dated the 27th March, 1829.

To the Court of Sudder Dewanny Adawlut have had before them your letter, bearing date the 2nd instant, requesting to know whether in the case, Fukhurooddeen Hyder *versus* Duhan, a shop-keeper residing in cantonment, the execution of a decree given in a *pundit's* court shall be stopped, on the ground of the incompetency of the court to hear and try it, or whether the defendant is to be referred to the military authority; or whether the *pundit's* decision in the case is to be reviewed by yourself.

2. In reply, I am desired to acquaint you, that the cause of action in the case cited by you having been under the sum of 200 rupees, and the defendant being, (as the Court conclude he is from your letter,) a person amenable to martial law, the suit was not cognizable by the civil authorities, and that you must therefore consider the *pundit's* decision as null and void, leaving the plaintiff to prefer his suit to the military court of requests.

3. The Court concur in the opinion expressed in the concluding paragraph of your letter, it being conformable with the rule contained in clause 4, Section 3, Regulation XX. 1825, and the provisions therein referred to.

March 27, 1829.

To the Commissioner of Cuttack, dated the 27th March, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 14th ultimo, requesting their instructions as to the proper course of proceeding with respect to certain decisions which have been appealed to your authority.

2. With reference to the case which was referred for trial to the *sudder ameen*, after a decision had been passed by the collector, I am desired to communicate to you the opinion of the Court, that there appears to be ample ground for the admission of a special appeal, with a view to determine the legality or otherwise of the proceedings; and that, should you be of opinion that they were illegal, you ought to proceed in the mode suggested by yourself, namely, to return the case to the judge, with orders for him to try it on the original plaint.

3. As to the second point the Court direct me to acquaint you, that you should exercise your own discretion; but that, in the Court's opinion, the decision of the two cases alluded to, without reference to the award of the arbitrators, affords sufficient reason to justify the admission of a special appeal in each of them.

March 27, 1829.

To the Judge of the City of Moorshedabad, dated the 3rd April, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th February last, submitting the following questions for their opinion, with reference to the provisions contained in Section 30, Regulation XXVII. of 1814.

First. Whether in the event of two defendants in a civil suit choosing to employ the same *vakeel*, under separate *vakalutnamahs*, and each allotting to him the full amount of fees prescribed by Section 25 of the regulation in question, such *vakeel* would be authorized in receiving the same?

No. 499.
1814.
Reg XXVI.
Sec 2, (1. 2.
1819.
Reg. II. Sec. 30.

No. 500.
1814.
Reg XXVII.
Sects. 30 and 25.

Secondly. Whether in the event of two separate *vakeels* being employed by two separate defendants, they would each be entitled to receive the full amount of fees, and, in that case, what amount of fees would be chargeable to the plaintiff, on the dismissal of the suit?

2. In reply to your first question, I am directed to communicate to you the opinion of the Court, that where a *vakeel* is employed by two defendants, under separate *vakalut-namahs*, he is entitled to receive from each the full amount of fees prescribed by Section 25, Regulation XXVII. 1814; and in reply to your second question, that where two separate *vakeels* are employed by two defendants, they are each entitled to the full amount of fees, and that the whole amount of fees so due is chargeable to the plaintiff on the dismissal of his suit.

April 3, 1829.

No. 501. *To the Officiating Commissioner of Circuit of the 10th Division, dated the 16th April, 1829.*

^{1818.}
Reg. XII. Sec. 5. I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 26th ultimo, requesting information as to what course of proceeding is to be adopted towards Mohun Pasban, charged with having escaped from jail, he having before been twice convicted of the same offence.

2. In reply, I am directed to communicate to you the opinion of the Court, that the escape of the individual in question not having been attended by violence, it was not competent to the magistrate, under Section 5, Regulation XII. 1818, to commit him to take his trial for that offence; and that it was the duty of the magistrate to have awarded such punishment as he might deem adequate, not exceeding that prescribed by clause 1 of the section above cited.

3. The Court therefore have been pleased to quash your proceedings, and to direct, that you remand the prisoner to be dealt with by the magistrate as above directed.

April 16, 1829.

No. 502. *To the Judge of Zillah Tipperah, dated the 24th April, 1829.*

¹⁷⁹⁹
^{Reg. VII.}
^{Sec. 15. Cl. 7.} The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 7th instant, requesting to be furnished with their opinion and orders on the following point: An *ijuradar* obtains a farm from a *zemindar* for five years, and enters into agreements with the *ryots* for that term; but after holding it for two years, he becomes a defaulter, is ousted, his engagement with the *zemundar* annulled according to clause 7, Section 15, Regulation VII. of 1799, and a new man obtains the farm for the remaining period of three years. Under these circumstances, is it in the power of the new *ijaradar* to annul the above leases granted by the former *ijaradar*, and, to enter into agreements with the *ryots* for the three years which are to come?

2. In reply, I am desired to refer you to the provisions contained in clause 4, Section 18, Regulation VIII. 1819, as meeting the point contained in your reference.

April 24, 1829.

To the Judge of Zillah Jungle Mehals.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion on the following point : Is a *zillah* judge authorized to take up and investigate, in a summary manner, a complaint preferred by a *zemindar* or his *gomshtah* against the *ryots* for breach of attachment of crops, made under the provisions of Section 13, Regulation V. 1812.

No. 503.
1812
Reg. V. Sec. 12.

2. In reply, I am desired to refer you to the provisions contained in Section 15, Regulation VII. of 1799, and to acquaint you, that the Court determined on the 9th of August 1806,* that all suits instituted under the section in question shall be tried in a summary manner.

To the Commissioner of Circuit for the 20th Division, dated the 25th April, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd instant, in the case of *Government versus Sheikh Bukhtaur*, charged with giving money to witnesses in a civil suit for the purpose of influencing their evidence.

No. 504.
1817
Reg. XVII. Sec. 14,
Cl. 2.

2. In reply, I am desired to acquaint you, that, adverting to the circumstances stated in your letter, the Court entirely concur with you in opinion, that the *zillah* judge was not authorized, under the provisions of clause 2, Section 14, Regulation XVII. 1817, to commit the above named individual for trial.

3. The Court have therefore been pleased to annul the commitment in the case in question, and they direct that you adopt the necessary measures for the immediate release of the prisoner.

April 25, 1829.

To the Magistrate of Zillah Backergunge, dated the 8th May, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 18th ultimo, requesting to be informed if the magistrates are entitled to award costs to parties suing agreeably to Regulation XV. of 1824.

No. 505.
1824
Reg. XV.
1797
Reg. XIV. Sec. 8.

2. In reply, I am directed to acquaint you, that agreeably to Section 8, Regulation XIV. 1797, the criminal courts are authorized to adjudge a reimbursement of costs actually incurred upon any prosecution before them, by either of the parties thereto, in particular instances, wherein they shall consider such reimbursement just and equitable.

May 8, 1829.

To the Officiating Commissioner of Circuit for the 10th Division, dated the 8th May, 1829.

No. 506.
1817
Reg. XVII. Sec. 9.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, requesting to be informed whether you can pass a sentence of *tushheer* on Musst. Inderwutee, charged with *perjury*, under circumstances stated in your letter.

2. In reply, I am desired to acquaint you, that there does not appear to be any rule exempting females from the punishment in question.

May 8, 1829.

* See Construction No. 23, page 7.

No. 507.

1816
Reg. IV. Sec. 4.
1826
Reg. III. Sec. 2.
1829
Reg. I. Sec. 3.

To the Benares Provincial Court of Appeal, dated the 8th May, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th ultimo, annexing copy of a letter from the acting judge of the Southern Division of Bundelkund, requesting the Court's opinion relative to the competency of commissioners of circuit to exercise under Section 3, Regulation I. of 1829, the powers vested in judges of circuit by Section 4, Regulation IV. of 1816.

2. In reply, I am desired to refer you to Section 2, Regulation III. 1826, which you appear to have overlooked, by which the control of the civil jails is vested in the magistrates, and by which, consequently, the duty alluded to in Section 4, Regulation IV. 1816, was transferred from the judges of the provincial court to the judges of circuit.

3. You will be pleased to furnish the acting judge of *zillah* Allahabad, with a copy of the above remark, for his information and guidance.

May 8, 1829.

No. 508.

1828
Reg. III.
1819
Reg. II

To the Acting Judge of Zillah Purnea, dated the 22nd May, 1829.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 11th instant, requesting to be informed whether you should forward to the commissioner appointed under Regulation III. of 1828, any suits of Regulation II. 1819, pending in your Court.

In reply, I am desired to acquaint you, that the suits in question should be retained in your own file, the district of Purnea not having been enumerated in the resolution of Government, under date the 19th June last, as one of those subject to the jurisdiction of a special commissioner appointed under Regulation III. of 1828.

May 22, 1829.

No. 509.

1814
Reg. XXIII.
Sec. 52.
1825.
Reg. VII. Sec. 3.

To the Acting Judge of Zillah Allahabad, dated the 29th May, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 12th instant, requesting to be informed, whether the courts are authorized to employ their *nazirs* in the attachment and sale of personal property for the purpose of realizing the amount of fines, or of decrees regular and summary; and if so, whether the *nazirs* in such cases are entitled to receive a commission on the proceeds of the sales, in the same manner as *moonsiffs*, under Section 52, Regulation XXIII. 1814.

On the first point I am directed to refer you to the provisions of Section 3, Regulation VII. 1825, wherein you will find recognized the practice alluded to by you, of employing the *nazirs* in the attachment and sale of property; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to *moonsiffs*, who are not, in the discharge of their ordinary functions, ministerial officers of the courts, not being analogous to the case in point.

May 29, 1829.

To the Dacca Court of Appeal, dated the 5th June, 1829.

No. 510.

Rules for distribution of the business of Provincial Courts, dated 14th January, 1819.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 28th ultimo, stating that the distinction of senior and second judges being abolished by Regulation III. 1829, the rules for the distribution of business, under date January 14th, 1819, issued by the Sudder Dewanny and Nizamut Adawluts, are no longer applicable to the present constitution of the Court; and requesting other instructions in the room of those rules.

2. In reply, I am desired to acquaint you, that the rules to which you refer were framed chiefly with reference to the duties formerly required of the judges in their capacity of judges of circuit; that no fresh instructions appear necessary; and that you should adopt such rules and make such arrangements as may be most convenient and conducive to the prompt and efficient discharge of the business of your office.

June 5, 1829.

To the Acting Magistrate of Zillah Allahabad, dated the 19th June, 1829.

No. 511.

1817
Reg. XX.
Sec 10, Cl 17.
1816
Reg. XVII.

The Court of Nizamut Adawlut have had before them your letter, dated the 26th ultimo, requesting to be informed whether you are authorized under clause 17, Section 10, Regulation XX. 1817, to award a per centage to your *cutwal* on the sum of 26,000 rupees found by him in searching certain houses; and if not, whether you are at liberty to apply for a reward being granted to that officer under the provisions of Regulation XVII. 1816.

2. In reply, I am desired to communicate to you the opinion of the Court, that the *cutwal* is not entitled to a per centage under the enactment cited by you; but that you are of course at liberty to make any recommendation in his favour to the commissioner of circuit, by whom, in his capacity of superintendent of police, it will be determined whether that individual is entitled to a reward for meritorious service.

June 19, 1829.

To the Commissioner of Circuit for the 12th Division, dated the 17th July, 1829.

No. 512.

1807
Reg. IX.
Sects 4 and 6.
1806.
Reg. II. Sec 2.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, suggesting that a rule of practice be issued by the Court, stating the extent of the powers vested in a general *mohktar* to act for another.

2. In reply, I am desired to acquaint you that the Court do not consider any rule of practice to be requisite on the subject, and to refer you to the provisions contained in Sections 4 and 6, Regulation IX. 1807, and Section 2, Regulation II. 1806, which clearly recognize the admission of general *mohktars*; but the Court observe that, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority, according to the particular circumstances of each case.

July 17, 1829.

No. 513.

Regarding the power of acting on petitions of appeal forwarded by dawk.

To the Commissioner of Circuit of the 15th Division, dated the 17th July, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 30th ultimo, requesting the opinion of the Court as to whether you are authorized to act on petitions of appeal received by dawk from the different stations, unaccompanied by a power of attorney.

2. In reply, I am desired to communicate to you the opinion of the Court, that though you are at liberty to call for the proceedings of a magistrate in any case, from whatever source your information may have been derived, whenever such measure may appear to you necessary for the ends of justice, yet that a party is not regularly entitled to have his petition attended to, unless presented by himself in person, or by his representative duly authorized.

3. The Court direct me to add that, notwithstanding the inconvenience pointed out by you, and which doubtless may occasionally occur under the existing system, it would be objectionable to admit so lax a mode of presenting petitions as transmission by dawk; nor, in the Court's opinion, would the adoption of the method suggested by you to facilitate petitioning, by requiring the authentication of the magistrate, be at all necessary or advisable.

July 17, 1829.

No. 514.

1814.
Reg. XXIII.
Sec. 8, Cl 2,
and Sec. 63.

To the Dacca Court of Appeal, dated the 24th July, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 26th ultimo, suggesting that some provision be made, empowering you to nominate persons to officiate for *sudder ameens*, who may be absent on leave.

2. The Court conclude that you refer to your power of confirming the temporary nominations made by the judges within your jurisdiction of persons to officiate during the occasional absence of the permanent incumbents; but they observe, that as you are already vested with the power of confirming permanent appointments to any vacancies that may occur, there can be no objection to your exercising the same authority in case of a temporary nomination.

3. I am desired to add, that the rule cited by you in the third paragraph of your letter, namely, clause 2, Section 8, Regulation XXIII. 1814, may be considered applicable to temporary officiating *moonsiffs*.

July 24, 1829.

No. 515.

1823.
Reg. VI.

To the Judge of Zillah Jessore, dated the 24th July, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 15th instant, requesting the Court's construction of Regulation VI. 1823, as to whether the engagement executed by parties applying for possession of indigo crops, under the provisions of clause 9, Section 3 of the above enactment, can be enforced under the summary award.

2. In reply, I am desired to answer your question in the affirmative, and to acquaint you, that the summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. In the event of the amount not

being paid, it should be realized by the process prescribed for giving effect to summary judgments; and, with reference to the remark contained in the third paragraph of your letter, I am desired to observe, that the case is not altered by the fact of the party cast being British born subjects, such individuals being, by Section 107, Chap. 155, 53rd George III. declared amenable, equally with natives, to the local courts of civil judicature.

July 24, 1829.

To the Commissioner of Circuit for the 13th Division, dated the 24th July, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 22nd of May last, with its enclosure from the magistrate of *zillah* Rungpore, explanatory of his reasons for employing the law officers attached to his court in the manner alluded to in your letter of the 30th of April.

2. In reply, I am desired to communicate to you the following remarks for the information and guidance of Mr. Smith, to whom you are requested to furnish a copy of the same.

3. Independently of the inexpediency of referring every description of criminal case to the law officers for investigation and report, as unnecessarily occupying valuable time which would be much more profitably employed in the transaction of civil business, the Court observe, that the practice is illegal, and not warranted by the rule contained in clauses 2 and 3, Section 3, Regulation III. 1821.

4. The latter clause declares the law officers to be authorized to exercise the same powers as those vested in the assistants to the magistrates by Section 20, Regulation IX. 1807; and those powers, as declared in the concluding part of the same clause, are confined to the trial and decision of trivial cases, and cannot be construed as conveying to such law officers authority to investigate and report upon any description of cases which they are not ultimately competent to decide.

5. Where this practice generally adopted, the Court further observe that it might be the occasion of much obvious impropriety, and that the same law officer, who investigated and reported upon a case, might frequently be called upon to furnish a *futwa* as to the guilt or innocence of the prisoner on his trial before the court of circuit.

6. It may of course occasionally, (though the Court would suppose rarely,) happen, that a case, apparently trivial, may, on investigation, turn out to be of a serious nature; in which event it would be necessary for the law officer, to whom the case had been sent for trial and decision, to return it to the magistrate, unaccompanied however by any opinion as to the merits of the case; and the Court are, upon the whole, clearly of opinion that Mr. Smith's view of the existing rules on this subject is erroneous, and that the magistrates are authorized to refer such cases only to their law officers, as are of a trivial nature, and admit of their being finally disposed of by those officers.*

July 24, 1829.

No. 516.

1821.

Reg. III.

Secs 2 and 3.

1807

Reg. IX. Sec. 20.

* Communicated on the same date to the several commissioners of circuit, for their information, and that of the magistrates.

No. 517. *From the Commissioner of Circuit for the 20th Division, dated the 21st July, 1829.*

^{1818.}
Reg. VIII. Sec. 9,
Cl. 2.

An instance having come to my notice, in which a magistrate, on the occasion of his requiring a prisoner charged with being a person of bad character to furnish security for his good conduct for the term of three years, ordered, that in the event of the prisoner's failing to give the security, on the expiration of, or within one year, from the date it was required of him, the proceedings should then be laid before the commissioner of circuit.

2. Now it appears to me that the latter part of the above order was contrary to law, and that according to clause 2, Section 9, Regulation VIII. 1818, the proceedings, in all cases of prisoners in confinement under requisition of security for their good behaviour, for any period exceeding twelve months, must be laid before the court of circuit, at the sessions next ensuing after passing of such order; and I therefore request the superior Court will be pleased to inform me whether my construction of the clause in question is correct, or otherwise.

*To the Commissioner of Circuit for the 20th Division, in reply to the above,
dated the 7th August, 1829.*

The Court of Nizamul Adawlut have had before them your letter, dated the 21st ultimo, bringing to the Court's notice an irregular order passed by a magistrate in the case of a prisoner confined under requisition of security, and requesting the Court's construction of clause 2, Section 9, Regulation VIII. 1818.

2. In reply, I am desired to communicate to you the opinion of the Court, that your construction of the provision in question is correct, and that the proceedings in all cases of prisoners in confinement under requisition of security by a magistrate for their good behaviour, for any period exceeding twelve months, must be laid before the commissioner of circuit at the sessions next ensuing after the passing of such sentence.

August 7, 1829.

No. 518.

^{1817.}
Reg. XVII.

To the Commissioner of Circuit for the 7th Division, dated the 7th August, 1829.

The Court of Nizamul Adawlut have had before them your letter, dated the 14th ultimo, with its Persian enclosures and copy of the correspondence which has passed between yourself and the acting magistrate of Allahabad in the case of Rummun Lal, charged with the embezzlement of public money.

2. In reply, I am directed to communicate to you the opinion of the Court, that your instructions to the acting magistrate were correct and proper; that under the circumstances of this case the acting magistrate would have evinced a much sounder judgment had he awaited the result of the acting judge's reference to this Court; and that clause 2, Section 14, Regulation XVII. 1817, cited by him in justification of his proceeding, is not applicable, that rule applying only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority.

3. I am directed to add, that by my letter written to the late acting judge on the 27th of March last, instructing him to commit Rummun Lal and the other individuals implicated to take their trial before the commissioner of circuit for the division on the charge of fabrication or embezzlement, or on both of those charges, should it appear to him from the proceedings already held, that there was sufficient evidence on which to found their conviction, it was intended that Mr. Brown should have recourse to this proceeding in his capacity of acting magistrate, and not in his judicial capacity.

August 7, 1829.

To the Judge of Zillah Beerbboom, dated the 21st August, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 10th instant, requesting to be informed whether the present practice of receiving summary petitions and issuing process against defaulting cultivators for arrears of rent however small the amount, is to be permitted to continue, and whether you are at liberty to dismiss the whole of such summary suits now pending.

No. 519.

1799
Reg. VII.

2. In reply, I am desired to acquaint you that, under the existing regulations, a person to whom arrears of rent may be due is authorized to proceed against the defaulter, either by distress of his property or attachment of his person; and that he may exercise the option allowed him in such mode as he may conceive most convenient to himself.

3. You are consequently not at liberty to reject summary suits instituted under Regulation VII. 1799, whatever may be the amount sued for, and you will be pleased to proceed in due course to the adjudication of those now pending.

August 21, 1829.

Extract from a letter from the Judge of Mymunsingh, dated the 3rd August, 1829.

No. 520.

PAR. 1. May I request the favour of your obtaining for me the superior Court's opinion on the following queries:

1793.
Reg. XIII. Sec. 8.

1st. Whether under Section 8, Regulation XIII. 1793, *sudder ameens* and *moonsiffs* are included among the native officers directed not to interfere, publicly or privately, in any cause or matter depending before the court (judge's) to which they may be attached?

2nd. Whether there is any exception in the event of the matter or cause being before any other court, but that of the judge, or the court over which the *sudder ameens* or *moonsiffs* may preside?

3rd. Whether the circumstance of the cause or matter being pending in appeal from the orders of the lower courts, either before the Sudder Dewanny Adawlut, court of appeal, judge's court, or the court of *sudder ameen*, (more particularly in appeal before the judge's court, to whose authority they may be subordinate,) exempts them from the prohibition in the section quoted?—In other words, are they allowed to interfere, publicly or privately, in any cause or matter originally decided or brought to a hearing in the judge's court, but which may be pending in appeal before the appellate or superior Court,

or which may be pending in appeal before the judge's court from decisions passed by the register, *sudder ameens* or *moonsiffs*?

To the Judge of Sillah Mymunsingh, in reply to the above, dated the 21st August, 1829.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 3rd instant, requesting the Court's construction of Section 8, Regulation XIII. 1793, and submitting various observations in relation to that subject.

2. In reply, I am desired to communicate to you the opinion of the Court, that *sudder ameens* and *moonsiffs* are not included in the prohibitory provisions of the rule cited by you.

August 21, 1829.

No. 521.
1829.
Reg II. Sec 3
1821
Reg. III. Sec 5.

To the Commissioner of Circuit for the 12th Division, dated the 4th September, 1829.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 17th ultimo, with its annexed copy of a letter from the acting joint magistrate of Monghyr, requesting the Court's opinion as to the amended provisions contained in Section 3, Regulation II. 1829.

2. In reply, I am directed to acquaint you that the Court fully concur with you in opinion, that the provisions in question were not intended to rescind the rule contained in Section 5, Regulation III. 1821, and that an appeal from the order of a magistrate is still admissible under Regulation II. 1829, though more than a month of thirty days may have elapsed from the date of the order, if it can be proved that the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period.

September 4, 1829.

No. 522.
Giving bribes to the
umlah of a public of-
ficer is puni-hable as
a misdemeanor

To the Commissioner of Circuit for the 13th Division, dated the 4th September, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion as to whether a native, giving bribes to the *umlah* of a public officer for corrupt purposes, is liable to be prosecuted for so doing.

2. In reply, I am desired to acquaint you that the act in question is clearly a misdemeanor, both according to the English and Mahomedan law, and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution.

September 4, 1829.

No. 523.
1819
Reg. VIII.

On the question, as to whether a farmer under the court of wards has the right of bringing to sale dependent *talooks* under Regulation VIII. 1819, the Court, on the 4th September, 1829, observed, that the collector, (or more strictly speaking the court of wards,) stands in the place of the *zemeendar*; and that a *surburakar*, appointed by the collector, has the same powers as a *surburakar* appointed by the *zemeendar*, (were he of age,) would have, and is answerable to the collector for every thing he does in the management of the state; and that a farmer, under a lease from the collector, being responsible to the collector

for nothing but the rent he has agreed to pay, stands exactly in the same predicament as a farmer under a lease from a *zemeendar*; and that it had been held by the Court, (see construction, dated 7th September, 1827,^{*}) that farmers holding of proprietors cannot exercise the privilege given to the latter by Section 8, Regulation VIII. 1819.

2. The reason which induced the Court to adopt that construction was, that the enactment cited, specifying only proprietors, could not be held to give the large powers it confers to any but proprietors.

September 4, 1829.

The following question being proposed to the Court, "An individual, whose security has been tendered in a cause about to be appealed to the King in Council, has petitioned against the acceptance by this Court of the security so tendered. The document, intimating his willingness to become the security, was delivered into court by the appellant, who claims it to be restored to him, upon the ground of his actual presentation of it; against this the security protests, and prays, the document being his, and now cancelled by him, that he, and not the appellant, may receive it under these circumstances what course should be pursued?" the majority of the Court declared their opinion, that the documents in question should be returned to the appellant, as the party by whom it was filed, a copy of the same being retained in the office; and the petitioner's application was rejected accordingly.

September 4, 1829.

No. 524.

To the Commissioner of Circuit for the 12th Division, dated the 4th September, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 7th ultimo, and its enclosures, referred on the ground of the collector's having refused to give effect to an order issued by you under Regulation V. 1827.

2. In reply, I am desired to acquaint you, that the Court can discover no rule in the existing regulations which could be construed to authorize an order of attachment by a commissioner of circuit; and that consequently it is the opinion of the Court, that you exceeded your powers in issuing to the collector the instructions out of which your reference originated.

September 4, 1829.

No. 525.

1827.
Reg. V.

The Court determined on the 25th September 1829, that the concurring opinion of two judges, who agree in all points of the decision, is final and conclusive, though it differ from the opinions of two other judges who do not agree with each other.

September 25, 1829.

No. 526.

* No. 461, p. 196.

No. 527.

1819.
Reg. II. Sec. 30.*To the Judge of Zillah Tipperah, dated the 30th October, 1829.*

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 16th instant, requesting the Court's construction of Section 30, Regulation II. 1819.

2. In reply, I am desired to acquaint you, that the Court entirely concur with you as to the question referred, and that in conformity with Section 30, Regulation II. 1819, suits of every description, in which *lakheraj* land is in dispute, are properly cognizable by the collectors, and not those only in which Government is a party.

3. You are requested to communicate this construction to the collector of Tipperah, and in the event of his still refusing to entertain the suits referred to him, you will inform the parties concerned that they are at liberty to appeal against his order to the commissioner of revenue for the 15th division.

October 30, 1829.

No. 528.

1811
Reg. VII. Sec. 5.*To the Commissioner of Circuit of the 11th Division, dated the 30th October, 1829.*

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, with its enclosed copy of correspondence between yourself and the magistrate of Behar, in the case of Fakirchund.

2. With reference to the point at issue between yourself and Mr. Jackson, I am desired to communicate to you the opinion of the Court, that a commissioner of circuit is not at liberty in the case of a commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint, though he is doubtless competent to direct the commitment of the prosecutor, and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and that an attempt has been made to substantiate it by false evidence.*

October 30, 1829.

No. 529.

1821.
Reg. III. Sec. 2.
1825.
Reg. IV.*To the Magistrate of Zillah Purneah, dated the 20th November, 1829.*

The Court of Nizamut Adawlut have had before them your letter, dated the 6th instant, requesting to know whether an assistant to the magistrate, vested with special powers described in Section 2, Regulation III. 1821, is competent to direct the taking of *mochulkas* and security under the provisions of Regulation IV. 1825.

2. In reply, I am desired to communicate to you the opinion of the Court, that the powers in question may be exercised by assistants so circumstanced.

November 20, 1829.

No. 530.

1811.
Reg. VII. Sec. 5.*Letter from the Commissioner of Circuit of the 11th Division, dated the 28th**October, 1829.*

With reference to my letter to your address, dated the 23d ultimo, I beg to inform you that I was not then aware, that a reference on the same subject was made on the 12th May, 1809, to the Court of Nizamut Adawlut, by Mr. Hawkins, then 2nd judge of the

* See No. 530, in this page.

Patna court of circuit, and that the latter court were informed in reply by the superior Court on the 24th of that month, "that as the magistrates are expressly authorised by Section 10, Regulation IX. 1793, to punish litigious, vexatious, or groundless complaints by fine or imprisonment, the Court are of opinion that a similar power may be exercised by the courts of circuit in particular cases appearing to require it."

*To the Commissioner of Circuit for the 11th Division, in reply to the above, dated
the 27th November, 1829.*

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, dated the 28th ultimo, in continuation of your former reference on the subject of the competency of a court of circuit to punish litigious and groundless complaints by fine and imprisonment.

2. In reply, I am directed to acquaint you, that the construction now cited by you is not at variance with that communicated to you in my letter, under date the 30th ultimo;* and that the former has reference to appealed prosecutions brought by private individuals before the court of circuit at the *sudder* station, and the latter to cases of commitment tried before a commissioner of circuit, in which the very fact of the commitment having been made by the magistrate affords sufficient presumption that their complaint is not groundless or malicious.

November 27, 1829.

At a Court of Sudder Dewanny Adawlut held on the 27th day of November, 1829, it was determined, that according to the intent and meaning of Regulation VII. 1799, Regulation VIII. 1819, and the constructions of this Court, bearing date the 27th of June and the 14th of November, 1809, a *sudder putneedar* cannot exercise the same authority as is possessed by a *zemindar*, with respect to his under tenants, of selling the tenure of his *dur-putneedar* without previous application to the Court.

November 27, 1829.

No. 531.
1799
Reg. VII.
1819
Reg. VIII.

To the Commissioner of Cuttack, dated the 4th December, 1829.
The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 20th ultimo, with its enclosed reference from the judge of Cuttack, on the subject of the construction of Regulation VII. 1825, contained in this Court's circular instructions, bearing date the 6th of June, 1828.†

2. In reply, I am desired to acquaint you, that those instructions did not refer to the case of a purchaser who refused to take possession of the property purchased within a reasonable period after possession has been tendered to him; and that the purchase money should, in such case, be paid to the decree-holder, the purchaser being warned that he must abide by the consequences of refusing to take possession.

December 4, 1829.

No. 532.
1825.
Reg. VII.

* No. 528 in the preceding page.

† See Cir. Oi. S. D. A. No. 1, page 1, vol. II.

No. 533.
1822.
Reg. IX, Sec. 2.

To the Commissioner of Circuit for the 12th Division, dated the 18th December, 1829.

The Court of Nizamut Adawlut have had before them your letter, dated the 4th instant, requesting instructions on the following points :

First. Suppose persons from the Morung or other independent state, (that is those not coming under the meaning and extent of Section 2, Regulation IX. 1822, defining what classes of persons are subjects of the British Government,) shall enter the Company's territories, and rob and plunder and commit other heinous crimes, and shall make their escape beyond the Company's boundary line ; can such persons, if given up by the foreign state, be tried before our courts ?

Secondly. Suppose a native subject of the British Government shall commit a heinous crime, and escape beyond the Company's territory, but shall be delivered up by the independent state ; is any reference necessary previously to the magistrate's proceeding to try him before his court ?

Thirdly. If a person, not being a subject of the British Government, shall be accused of a crime of a heinous nature, and seized in the Company's provinces ; can he be tried without any reference to Government ?

Fourthly. Is the written confession of a prisoner, taken down in a foreign state, before he has been delivered up by that state, legal or not ?

2. I am desired to answer your three first questions in the affirmative, and to observe with respect to your second and third, that the Court conclude your meaning to be that the crime in the former case was committed beyond, and in the latter case within the Company's territory.

3. Previously to answering your fourth question, the Court desire me to request that you will define more distinctly what meaning you attach to the terms "legal confession."

December 18, 1829.

No. 534.
1819.
Reg. II.
1828.
Reg. III. Sec. 2,
Cl. 1.

To the Special Commissioner for the Patna Division, dated the 1st January, 1830.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 18th November last, requesting their opinion in a suit appealed from the decision of the collector and Board of Revenue, and tried by the late third judge of the Patna provincial court under the provisions of Regulation II. 1819.

2. In reply, I am desired to observe as follows : By clause 1, Section 2, Regulation III. of 1828, suits for the resumption of lands held rent-free, in districts in which a commissioner has been appointed under that Regulation, can only be finally determined by the commissioner.

3. By clause 4 of the same section, all such suits which may be pending in the ordinary courts are directed to be transferred to the commissioner ; and by the same clause, it is expressly provided that no appeal shall lie to any established courts of judicature from any decision that has been or shall be passed by a Board of Revenue, or a collector, previously to, or pending the appointment of a commissioner.

4. By those rules, therefore, the Court consider, that they are precluded from admitting the appeal in the case referred to, and they direct me to communicate to you their opinion that clause 6 of Section 4 should be considered as authorising you to admit an appeal

from the decree of the Patna provincial court; otherwise, the Court observe, the party deeming himself aggrieved by that decree would be deprived the right of appeal which was open to him prior to the passing of that regulation.

January 1, 1830.

To the Magistrate of Zillah Purneah, dated the 1st January, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 23rd ultimo, requesting the Court's opinion as to whether a magistrate is competent under Regulation X. 1824, modified by Section 7, Regulation I. 1829, to take evidence on oath of persons supposed to have been concerned in an affray attended with homicide and severe wounding.

2. In reply, I am desired to communicate to you the opinion of the Court, that affray not being enumerated in clause 1, Section 3, Regulation X. 1824, as one of the offences which a magistrate is authorized to tender a pardon to the persons concerned in, the evidence of participants in a case of affray is not admissible against other individuals implicated in the same offence.

January 1, 1830.

To the Judge of Zillah Cawnpore, dated the 1st January, 1830.

The Court of Sudder Dewanny Adawlut have had before them your letter, soliciting the Court's opinion on the following questions:

First. Can a judge carry into execution his own decree on a first appeal from a register's or *sudder ameen's* or *moonsiff's* court, before the expiration of three months, and without requiring security under clause 2, Section 11, Regulation XIII. 1808, from the party in whose favor he may have decreed? Or must he wait three months, and allow the party, against whom the award may be, the benefit of the period limited for the admission of appeals?

Secondly. If a decree passed on a first appeal is not to be executed until the three months allowed for special appeals be expired, may it not, nevertheless, be executed on the party holding the decree, if not in possession, giving security under clause 2, Section 11, Regulation XIII. 1808?

Thirdly. With reference to clause 4, Section 2, Regulation XXVI. 1814, if a provincial court, or other competent court pass an order admitting a special appeal, and yet it shall appear that their order was passed on other grounds than those stated in clause 1, Section 2, Regulation XXVI. 1814, is it competent to the judge, against whose decision the special appeal may have been admitted, to refer the subject to the Sudder Dewanny Adawlut, as an appeal upon the construction of clause 1, Section 2, Regulation XXVI. 1814?

2. In reply to your first and second questions, I am desired to communicate to you the opinion of the Court, that in all cases, in which an appeal is allowed by the regulations, the decree-holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed: but that possession may, of course, be awarded on the tender of such security, under clause 2, Section 11, Regulation XIII. 1808.

No. 535.

1824
Reg. X.
Sec. 3, Cl. 1.
1829
Reg. I. Sec. 7

No. 536.

1808
Reg. XIII.
Sec. 11, Cl. 2.
1814
Reg. XXVI. Sec. 2,
Cl. 1 and 4.
1796.
Reg. X. Sec. 2.
1803.
Reg. XXII. Sec. 2.

3. To your third question, I am desired to furnish a reply in the negative, as a reference by the judge, under such circumstances, would be placing himself in the light of an advocate of one of the parties of the suit.

January 1, 1830.

No. 537.

1814.
Reg. XXVI.
Sec. 20, Cl. 3.

On the 8th of January, 1830, the Court of Sudder Dewanny Adawlut resolved, that exhibits filed along with petitions for the admission of special appeals, under clause 3, Section 20, Regulation XXVI. 1814, are not subject to the payment of a fee on being filed.

January 8, 1830.

No. 538.

1810.
Reg. XIII.
Sec. 6, Cl. 3.

The following question having been proposed to the court: "A obtains a decree in the *zillah* court against B, who appeals to the provincial court. The judges of the latter call for a *bewusteh*, which is furnished by the acting *pundit* of the court; and upon this *only* the *zillah* decision is reversed. A appeals to the Sudder Dewanny Adawlut, where the *bewusteh* given (as above) appears to be at variance with the *shasters* and inadmissible, but the *evidence* is deemed sufficient to establish the right of B: on this *evidence* the reversal of the *zillah* decision is confirmed, the *bewusteh* of the provincial court being rejected. Must the proceedings be submitted to another judge of this court? or is the judgment given *thus*, by *one* affirming *judge, final?*" the Court determined that under all the circumstances of the case, and especially the rejection by the sitting judge of the law opinion delivered in the Court below, it was necessary that the case should be sent to another judge for his concurrence.

January 29, 1830.

No. 539.

1793
Reg. XIII. Sec. 11.

To the Commissioner of Circuit for the 13th Division, dated the 26th February, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, requesting the Court will determine what a magistrate ought to do in the event of an individual presenting a petition in court, stating that he paid 200 rupees to a private servant of his (the magistrate's), for an official situation, who had failed to procure the appointment, and also to refund the money.

2. In reply, I am desired to acquaint you, that the Court cannot concur with you in opinion, that the charge should be investigated and decided agreeably to Section 11, Regulation XIII. of 1793, the provisions of that rule being exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court.

3. The Court merely deem it necessary to add, that the magistrate should exercise his discretion in passing orders on the occasion of any petition being presented to him of the nature referred to by you, and that the petitioner will of course, if dissatisfied with his orders, be at liberty to appeal to your court.

February 26, 1830.

On the question, "as to whether a decree against the guardian of a minor can be executed to the detriment of a farmer, holding a lease of the estate decreed under a *pottah* from the court of wards ; the minor having been acknowledged by the court of wards as the adopted son of the deceased *mali*, but the asserted adoption having been disproved in the courts, and the claim maintained upon it set aside ; and the decree-holder petitioning to oust the farmer holding the lease as above, and to be put in possession of the land free from such engagement :" the Court were of opinion that the lease should stand, supposing absence of collusion.

No. 540.

February 26, 1830.

To the Judge of Zillah Backergunge, dated the 19th March, 1830.

The Court of Sudder Dewanny Adawlut have had before them your letter, dated the 6th instant, requesting the Court's instructions as to the mode necessary to be adopted respecting the disposal of sundry bonds, *tumussooks*, &c. deposited in your court, belonging to persons dying intestate.

No. 541.

1799
Reg V Sec 7.
1803
Reg III Sec. 16,
Cl. 7.

In reply, I am desired to refer you to the rule contained in Section 7, Regulation V. 1799, by which you will perceive, that an inventory of all personal property, unclaimed after the period of twelve months from the decease of the proprietor, should be transmitted to the Governor General in Council for his orders; and to direct that, with regard to the description of property specified in your letter, you adopt the same course of proceeding.

March 19, 1830.

To the Judge of Zillah Cawnpore, dated the 19th March, 1830.

I am desired by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, dated the 27th ultimo, soliciting the Court's instructions as to the following questions :

No. 542.

1821.
Reg I Sec 3,
Clauses 1, 2, 3, 4, 5
and 6.
1829.
Reg I Sec 10
Reg XVIII.
Sec 3, Cl. 2
1823
Reg I Sec 2,
Cl. 2.

First. As commissioners of revenue and circuit are, under Section 10, Regulation I. 1829, vested with all the powers formerly vested in the special commission by Regulation I. 1821, requesting to be informed, whether under the 1st, 2nd, 3rd, 4th, 5th, and 6th clauses of Section 2, Regulation I. 1821, the trial of every kind of *zemindaree* or *putteedaree* claim is not institutable before the commissioners of revenue ?

Secondly. If a claim be made by a *putteedur* against the *sudder malgozar* for a share of a *mehal*, and that *sudder malgozar* should not have instituted a suit himself, still is not such claim by the *putteedar* institutable before the commissioner of revenue, at the option of the parties ?

Third. Are not appealed suits, in whatever court pending, for lands and shares of *zemindaries*, equally subject to clause 2, Section 3, Regulation XVIII. 1829 ?

Fourth. In future what steps are the *zillah* courts to take on a *zemindaree* claim being filed ? At once to call upon the defendant under clause 2, Section 3, Regulation XVIII. 1829, or to refer the plaintiff at once to the commissioner of revenue ?

2. In reply to your first question, the Court can only observe, that all cases which were formerly cognizable, under the rules cited by you, by the special commissioners

under Regulation I. 1821, are equally cognizable by the commissioners of revenue appointed under Regulation I. 1822.

3. In reply to your second, that the rules cited by you have been extended by clause 2, Section 2, Regulation I. 1823, which authorizes the cognizance of all cases, wherein it may appear that any plaintiff has been deprived of his right by an illegal sale, without reference to his being a *sudler malgozar* or otherwise.

4. In reply to your third, that appealed suits are, in like manner as original suits, subject to clause 2, Section 3, Regulation XVIII. 1829.

5. And in reply to your fourth, that Regulation XVIII. 1829, refers to cases actually pending in the courts of judicature, and has no reference to cases which may arise hereafter, and which must of course be instituted in the revenue or the judicial courts, according as the subject matter may render them cognizable in the one or other tribunal.

March 19, 1830.

No. 543.

1813
Reg. II.

To the Magistrate of Zillah Rungpore, dated the 2nd April, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 29th ultimo, requesting to know whether embezzlement is a committable offence.

2. In reply, I am desired to acquaint you, that the Court do not understand the Regulation (II. 1813) cited by you as intending a repeal of the Mahomedan law relative to the offence of embezzlement, which, being punishable under that law, may clearly be committed for trial to the court of circuit.

April 2, 1830.

No. 544.

1827
Reg. V.

To the Commissioner of Circuit for the 12th Division, dated the 16th April, 1830.

The Court of Nizamut Adawlut have had before them your letter of the 31st ultimo, animadverting on the construction of Regulation V. 1827, conveyed to you in Mr. Macnaghten's letter of February 26th, viz. that their previous construction of that Regulation on the 4th of September, 1829,* was not intended to be applicable to the magistrate's court.

2. In reply, I am desired by the Court of Nizamut Adawlut to inform you, that the Court see no reason to alter the opinion conveyed to you in Mr. Macnaghten's letter of February 26th.

3. In reply to the first of the questions proposed in the conclusion of your letter, viz. whether a commissioner can direct a magistrate or joint magistrate to issue orders to the collector to attach lands, in conformity with Regulation V. 1827, I am directed by the Court to answer it in the negative.

4. In reply to the second question proposed, the Court consider the decision of the commissioner to be final in all cases in which the course of procedure prescribed in the Regulations has been followed.

April 16, 1830.

* No. 525, page 223.

To the Magistrate of Zillah Mymensingh, dated the 16th April, 1830.

I am desired by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, under date the 3rd instant, requesting the Court's opinion regarding the punishment to which *dewanny* prisoners, who have escaped the jail, may be subject.

2. In reply, I have to inform you that the Court do not deem such persons liable to any punishment. In case of their escape from jail, the only course to be pursued is to use all possible means for their re-apprehension; and when apprehended, to re-commit them to prison.

April 16, 1830.

To the Officiating Commissioner of Circuit for the 10th Division, dated the 23rd April, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, under date the 29th ultimo, enclosing a letter from the magistrate of Shahabad, on the subject of proceedings under the provisions of Regulation XV. 1824.

2. In reply, I am directed to inform you, that the Court of Nizamut Adawlut consider, that suits for dispossession to which *thicadars* are a party can only be tried under Regulation XLIX. 1793, and you are therefore requested to direct the magistrate of zillah Shahabad to strike off his file of suits cognizable under Regulation XV. 1824, the twenty-two cases mentioned in the eighth paragraph of his letter to you, dated the 20th ultimo.

April 23, 1830.

To the Commissioner of Circuit for the 13th Division, dated the 23rd April, 1830.

The Court of Nizamut Adawlut have had before them your letter, under date the 16th ultimo, requesting the Court's interpretation of an expression in their circular letter, dated July 13th, 1827,* and also inquiring whether disputes for personal property can be decided under Regulation XV. 1824.

2. In reply, I am directed to inform you, that under the Court's construction of Regulation XV. 1824, the supposed case of dispute between *ryots*, stated by you, is not cognizable under Regulation XV. 1824.

3. In reply to your second query, whether disputes for personal property can be investigated under this regulation, I am directed to refer you to the preamble thereof.

April 23, 1830.

To the Magistrate of Zillah Purnea, dated the 23rd April, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter, under date the 3rd instant, requesting the Court's opinion regarding the competency of an assistant vested with extra powers described in Section 2, Regulation III. 1821, to require security for good behaviour from a prisoner sent in by a *darogah*, under Section

No. 545.

Dewanny prisoners
are not liable to pun-
ishment for escaping
from jail.

No. 546.

1824
Reg. XV.

No. 547.

1824
Reg. XV.

No. 548.

1821.
Reg. III Sec. 2.
1817.
Reg. XX Sec. 20.
1818
Reg. VIII.

* See No. 453, page 191, circulated with the Court's letter of 28th August, 1829, No. 37, page 46, vol. II. of Nizamut Circular Orders.

20, Regulation XX. 1817, or to commence an enquiry into the character of a prisoner made over to him for trial on a specific charge.

2. In reply, I am directed to communicate to you the opinion of the Court, that an assistant vested with the special powers described in Section 2, Regulation III 1821, is not competent to act in either of the cases mentioned. Should he, in any trial referred to him by the magistrate, conceive it advisable to require security from a prisoner not convicted of the crime charged, he must report to the magistrate to that effect.

April 23, 1830.

No. 549.

¹⁸²⁸
Reg VIII.

To the Commissioner of Circuit for the 8th Division, dated the 30th April, 1830.

The Court of Nizamut Adawlut have had before them your letter, dated the 12th instant, desiring to be informed, whether a certain case, stated by you, is cognizable by the magistrate, under the provisions of Regulation VIII. 1828.

2. In reply, I am directed to communicate to you the Court's opinion, that the offence, as detailed by you in the second paragraph of your letter, would be more strictly considered as resistance of process than affray, and therefore punishable under the regulations applicable to the former case.

April 30, 1830.

No. 550.

Execution of a decree stayed on special grounds, without demand of security.

A decree having been passed against certain persons, under which they have been declared, with their families, the slaves, and as such the property of the decree-holder, was affirmed in the provincial court; but a special appeal was admitted by the Sudder Dewanny Adawlut, on the grounds of the appellants, (the slaves under the judgments already given,) not appearing to be so under what, by the Mahomedan law, is required to constitute slavery. The appellants did not give security to stay the execution of the decree, for which the decree-holder had made application. Under these circumstances, it became a question whether execution should be ordered; or if stayed, upon what terms.

The Court were of opinion, that as the special appeal was admitted on the presumption, that the appellants had been wrongfully declared to be slaves, and as they would be unable to prosecute their appeal if delivered over to the custody of the decree-holder as slaves, the execution of the decree should, in this special instance, be stayed without demanding security from the appellants.

May 7, 1830.

To the Judge of Zillah Cawnpore, dated the 7th May, 1830.

No. 551.

^{1805.}
Reg. II Sec. 10.
¹⁸¹⁴
Reg. XXVI.
Sec. 4, Cl. 2.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 21st ultimo, requesting the Court's answer to certain questions, involving the construction of Section 10, Regulation II. 1805; clause 2, Section 4, Regulation XXVI. 1814; and clause 1, Section 2, Regulation II. 1825.

2. In reply, I am directed to communicate to you the opinion of the Court, that under the circumstances stated in your letter, a second regular suit would be inadmissible; but that the plaintiff, whose suit had been dismissed by the *sudder ameen*, on the strength of the decree of the judge which was afterwards reversed in appeal by the provincial court, might petition for a summary appeal under Section 3, Regulation XXVI. 1814, as from a dismissal without an investigation of the merits of the case; or had the case been dismissed by a judge, on a decree of the provincial court afterwards reversed by the Sudder Dewanny Adawlut, the facts stated by you would be sufficient to authorize the judge to apply for a review of judgment, which the Court would grant; or, had the plaintiff preferred a regular appeal from the decision of the *sudder ameen*, the facts stated would be sufficient to authorize the admission of the appeal, notwithstanding the expiration of the period allowed by the regulations.

May 7, 1830.

The following question having been proposed to the Court: "A case being nonsuited by the *zillah* judge, the plaintiff appeals to the provincial court, where his case having been heard on its merits, a decision is passed in his favor. The respondent presents a petition for the admission of a *khas* or special appeal. As the provincial court ought, strictly speaking, to have merely tried the justice of the nonsuiting order—should a special appeal be admitted? or should the appeal be considered as a first or regular appeal?" the Court were of opinion, that the most regular course would be to admit a special appeal.

May 14, 1830.

No. 552.

Special appeal from a decision on its merits by the provincial court of a case dismissed on default by the *zillah* judge.

To the Judge of Zillah Futtehpore, dated the 28th May, 1830.

I am directed by the Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th instant, requesting to know, whether the petitions of all persons confined in jail are to be considered as coming under the exemptions specified in No. 7, Schedule B. Regulation X. 1829.

2. In reply, I am directed to inform you, that the Court are of opinion, that the exemptions referred to should be construed to allow the prisoners, confined under civil process, to petition on plain paper, only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and to the case in which they are confined.*

May 28, 1830.

No. 553.

1829
Reg. X.
Sch. B. No. 7.

To the Acting Judge of Zillah Futtehpore, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court's instructions as to the mode of proceeding to be adopted by a judge, in the event of the purchaser of property sold by

No. 554.

1825.
Reg. VII Sec. 2.

* Circulated for general information on the same date.

the officers of the court in execution of a decree refusing to pay the purchase money, and take possession of the property; and in the event of a second sale taking place, in what manner the judge is to realize the amount bid at the first sale, should the property be disposed of for a smaller sum.

2. In reply, I am desired to acquaint you, that, in the case stated, you should adopt the process prescribed for enforcing a decree of court.

May 28, 1830.

No. 555.

1829
Reg X
Sch. B. No. 7.

To the Judge of Zillah Cawnpore, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, inquiring on what stamp paper security bonds for costs of suits, &c. entered into by order of a civil court should be written, under the provisions of Regulation X. of 1829; and to inform you in reply, that such bonds should be written on the stamp prescribed in No. 7, Schedule B. Regulation X. 1829, for petitions presented to the courts requiring the security.

May 28, 1830.

No. 556.

1814
Reg XXVI.
Sec. 8, Cl. 5.
1829.
Reg. X.
Sch. B. No. 9.

To the Judge of Zillah Dinapore, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 6th instant, bringing to the notice of the Court two errors in the Bengalee translation of Regulation X. 1829, and requesting to be informed on what stamp paper the reasons for an appeal [*wujoohat-i-appeal*] should be presented.

2. In reply, I am directed to inform you, that the errors noticed by you will be brought to the notice of Government, with a view to their correction and to observe, on the subject of your last paragraph, that the fifth clause of Section 8, Regulation XXVI. 1814, which has not been rescinded by Regulation X. 1829, or any other enactment, provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B. Regulation X. 1829.

May 28, 1830.

No. 557.

1829
Reg X.
Sch. A. No. 7,
Sch. B. No. 10.

To the Secretary to the Government in the Judicial Department, dated the 28th May, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to request you will lay before the Right Honorable the Governor General in Council, the accompanying statement, furnished by Doctor Carey, Bengalee translator, of two errata which have been discovered in the Bengalee translation of Regulation X. 1829, with a view to their being printed for general information.

2. They are as follows: the omission of the negative particle *না* before the verb *হইলে*, in No. 7, Schedule A.; and the substitution of the word *অক্ষ* (half) in the No. 10, Schedule B., in the ninth line of the 2nd page containing that number, for the word *সেক্ষ*.

May 28, 1830.

*To the Officiating Commissioner of Circuit of the 17th Division, dated the
3rd June, 1830.*

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 15th ultimo, requesting the Court's opinion, whether a commissioner of circuit, with the concurrence of his law officer, is competent to convict prisoners upon strong presumption (*zun-i-ghalib*, or *shubah i-cuwee*) of burglary or theft, attended with wounding dangerously, and to proceed to pass sentence under Regulation LIII. 1803, in the absence of full legal proof; or whether it is required by Section 8, Regulation XVII. 1817, that the trials in such cases should be transmitted for the sentence of the Nizamut Adawlut. and of your letter of the 19th ultimo, reporting that in the cases you had in view in the above reference, death did ensue.

2. In reply, I am directed to inform you, that a *futwa* expressed in the terms mentioned by you is a *futwa* of conviction: and that if you concur therein, and the burglary or theft be accompanied with an attempt to commit wilful murder by whatever means, or with wounding, burning, or corporal injury, in such a degree as to endanger life, you should proceed, as prescribed in the fourth clause of Section 8, Regulation XVII. 1817, to pass upon the prisoners a sentence of thirty-nine stripes of the ratan and imprisonment and transportation for life, and refer the trial for the final orders of the Nizamut Adawlut; suspending the issue of your warrant for execution of your sentence until the final orders of the Nizamut Adawlut shall be received.

3. With reference however to your letter of the 19th ultimo, in which you state that death did ensue from the wounding, the Court, being of opinion that the commitment should not have been made until the result of the wounds had been put beyond doubt, either by the recovery from danger, or death of the wounded person, desire that you will stay all further proceedings, and direct the magistrate to commit the prisoners *de novo* on the charge of burglary, or burglary and theft, as the case may be, attended with murder.

4. In trying these cases, it will be incumbent on you to submit the record of the trial, with your opinion as to the guilt or innocence of the prisoners, without passing sentence, as prescribed by the regulations in all cases of murder.

June 3, 1830.

To the Magistrate of Zillah Midnapore, dated the 11th June, 1830.

In reply to your letter of the 2nd instant, I am directed by the Court of Nizamut Adawlut to inform you, that the melting down gold and silver coins, for the purpose of making ornaments with the metal, is not punishable under the provisions of clause 3, Section 10, Regulation XVII. 1817.

June 11, 1830.

To the Commissioner of Circuit of the 11th Division, dated the 11th June, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 2nd instant, transmitting copies of a letter from the acting magistrate of Patna, under date 18th June, 1828, to the address of the late Patna court of circuit, and of that court's reply, dated 26th June, 1828; stating, that agreeably to the spirit of clauses 2

No. 558.
1803
Reg LIII
1817
Reg XVII Sec. 8.

No. 559.
1817
Reg XVII
Sec. 10, Cl 3

No. 560.
1819.
Reg VII.
Sec. 6, Cl. 2 and 3.

and 3, Section 6, Regulation VII. 1819, the court of circuit conceived that the complaints of *beoparees* for arrears of wages when in the service of Government, were cognizable by the magistrate.

2. In reply, I am directed by the Court to inform you, that the Court consider the construction of the late Patna court to be erroneous, and that the *beoparees* should be referred to the civil court for the adjustment of their claims for the hire of their hackeries and bullocks.

June 11, 1830.

No. 561.

1824
Reg. XV.

To the Commissioner of Circuit of the 13th Division, dated the 18th June, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 5th instant, requesting, with reference to your letter of the 16th March last, and Mr. Thomason's reply of the 23rd April last,* a further construction of Regulation XV. 1824.

2. In reply, I am directed to inform you, that the construction of the above regulation given by you in your letter of the 16th March last is correct, and the provisions of Regulation XV. 1824, are only applicable to disputes between persons claiming a proprietary right in the land, or their agents, (*Gomastahs, Nails, &c.*)

June 18, 1830.

No. 562.

1821
Reg. I Sec. 3.
1829.
Reg. XVIII Sec. 2.
1823
Reg. I.

To the Judge of Zillah Caunpore, dated the 18th June, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 24th April last, acknowledging Mr. Macnaghten's letter of the 19th March last,† and requesting further information on the subject of claims for land, under the provisions of Section 3, Regulation I. 1820, and Section 2, Regulation XVIII. 1829.

2. In reply, I am directed by the Court to repeat the construction contained in the letter above-mentioned, that all suits which were cognizable by the special commissioners, under Regulation I. of 1821, and Regulation I. of 1823, are now cognizable by the commissioners of revenue. In regard to suits not called for by the commissioner, the Court desire you will exercise your judgment as to whether they should be transferred to that authority or not.

June 18, 1830.

No. 563.

Petitions to the Ni-
zamut Adawlut may
be presented by the
vakeels of the Sudder
Dewanny Adawlut or
by *mokhtars* duly ap-
pointed.

To the Judge and Magistrate of Zillah Etawah, dated the 18th June, 1830.

In reply to your letter of the 1st instant, I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to inform you that the *vakeels* of the Sudder Dewanny Adawlut may present petitions to the Court of Nizamut Adawlut, and that there are no *mokhtars* specially appointed to do so. Petitions in criminal matters are received through any *mokhtars* the petitioner may wish to employ.

June 18, 1830.

* See No. 547, page 231.

† See No. 542, page 229.

To the Commissioner of Circuit for the 13th Division, dated the 9th July, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 24th ultimo, requesting to know, with reference to Regulation V. 1830, by what process the defendants are to be summoned; and how the order for cultivating indigo is to be enforced.

2. In reply, I am directed to inform you, that the regulation in question being silent on the subject, the defendants should be summoned in the manner prescribed by the regulations at present in force, viz. by an *itilehnameh*, to be served by a single peon: and that the order to cultivate can only be enforced by the menace of increased punishment on any further default.

July 9, 1830.

To the Judge of Zillah Jessore, dated the 9th July, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 27th May last, on the subject of indigo engagements, and to communicate to you the following replies to the several questions therein submitted.

Question 1. The rules prescribed in Regulation II. 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation VI. 1823.

Question 2. The owner of the factory for the time being should be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the regulation referred to allows.

July 9, 1830.

Extract from a letter to the Magistrate of Zillah Mymensingh, dated the 16th July, 1830.

PAR. 2. With reference to the expression contained in your letter, that you cannot ascertain the exact date on which the translations were received, the Court direct me to notice, that you should invariably note on each copy of a regulation, and of the translations thereof, the date on which they may be received in your office, attesting the note by your official signature.

July 16, 1830.

To the Judge of the 24-Pergunnahs, dated the 23rd July, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting their opinion as to whether an application by Mr. E. Macnaghten, acting as receiver on the part of Kistonund Biswas, to carry into execution a decree of the Supreme Court, accompanied by a copy of the decree, is sufficient to authorize your interference; or whether a formal order of the Supreme Court, calling on you to give possession of the lands situated within your jurisdiction, should not issue, in order to bring the matter under your cognizance.

No. 564.

1830
Reg V

No. 565.

1805
Reg II.
1823
Reg. VI.

No. 566.

Date of receipt of
regulations to be en-
dorsed thereon.

No. 567.

Courts not to exe-
cute decrees of the
Supreme Court, un-
less a writ of assist-
ance be issued.

2. In reply, I am directed to inform you, that you should not interfere with the execution of decrees of the Supreme Court unless a writ directing execution be issued by that court.

July 23, 1830.

No. 568.

1824.
Reg. XV.
1793
Reg. XLIX.

To the Commissioner of Circuit for the 10th Division, dated the 23rd July, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 14th instant, submitting a letter from the magistrate of *zillah* Shahabad, under date the 29th ultimo, requiring the Court's opinion on certain points under Regulation XV. 1824.

2. In reply, I am directed to state, that in cases of disputes regarding land, if the proprietors of the lands are themselves engaged in the dispute, the case is cognizable under Regulation XV. 1824, and not otherwise; but that in the case of a mere farmer, if any one dispossess him or interfere with his rights, the provisions of the regulation before quoted do not apply, and the farmer must be referred to a summary suit under the provisions of Regulation XLIX. 1793, for recovery of possession, or to a summary suit for the rent of the lands of which the acts of his opponents have deprived him.

July 23, 1830.

No. 569.

1806
Reg II Sec. 10
1814.
Reg XXIII.
Sec. 45, Cl. 7.

To the Judge of Zillah Jungle Mehals, dated the 23rd July, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 9th instant, enclosing copy a letter from the register of your court, and requesting the Court's opinion on the subject of the release of a debtor confined in a *dewanny* jail, on his executing a *kistbundee* in favor of his creditor, under the provisions of Section 10, Regulation II. 1806.

2. In reply, I am directed by the Court to inform you, that according to the provisions above quoted, it is incumbent on the civil courts to release a debtor with the consent of his creditor, on the execution, by the former, of a *kistbundee*. The Court however observe, that the execution of a *kistbundee* for a larger sum than 64 rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to be released, under clause 7, Section 45, Regulation XXIII. 1814, after he has been confined for the space of six months, in execution of a decree for a sum not exceeding 64 rupees.

July 23, 1830.

No. 570.

Europeans presumed to have the same power of answering trivial complaints by attorney as natives.

To the Magistrate of Zillah Behar, dated the 30th July, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 15th instant, requesting the Court's opinion as to whether an European charged by a native with assault, under Section 105, Chapter 155, Statute 53rd of George III. is allowed to appear to answer the charge by attorney.

2. In reply, I am directed to observe, that the Court are not the authority to construe acts of parliament, but that they see no reason why Europeans should not be allowed the privilege of appearing by attorney which is enjoyed by natives.

July 30, 1830.

To the Commissioner of Circuit for the 9th Division, dated the 6th August, 1830.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, requesting the Court's opinion on certain points regarding the power of a magistrate, under Regulation XV. 1824, to accept arbitration bonds, and confirm and execute awards for the final decision of all matters at issue between the parties.

2. In reply, I am directed to inform you, that the Court are of opinion, that a magistrate has no power to receive such arbitration bonds, or interfere to the enforcement of the awards of arbitrators. The interference of a magistrate, under Regulation XV. 1824, is restricted to cases wherein he has reasonable ground to apprehend disturbances; and after he has interfered, his power extends no further than, after due inquiry, to award that the actual possessor retain possession of the disputed property.

3. If at any time after a case of dispute has been brought into the magistrate's court under the regulation above quoted, the parties should wish to refer their respective claims to the decision of the arbitrators, they are at liberty to do so; and upon their representing to the magistrate that they have agreed to an adjustment of their dispute in that manner, and satisfying him that there is no further ground to apprehend a breach of the peace, the Court are of opinion, that the magistrate should stay all further proceedings in the case. The parties would then be at liberty to refer their dispute to private arbitration, under Section 3, Regulation VI. 1813, and the award, whatever it might be, would be enforced by the civil court, in the manner prescribed in the second clause of the same section and regulation, upon application being made to it by either party within the time prescribed.

August 6, 1830.

To the Acting Judge of Zillah Allahabad, dated the 27th August, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 23rd ultimo, requesting the Court's opinion, as to whether you are authorized to take cognizance of a case of forgery arising out of a civil suit tried by a *sudder ameen*.

2. In reply, I am directed to inform you, that if the civil suit, in which the document said to be a forgery was filed, is pending before you in appeal, you are competent to commit the party, whom you may deem guilty of having forged it, (or filed it knowing it to have been forged,) to be tried by the court of circuit; but that if the appeal has been decided, the alleged forgery can only be brought under your cognizance, by your obtaining the sanction of the Sudder Dewanny Adawlut to revise your judgment.

3. I am further directed to inform you, that in the opinion of the Court, the *sudder ameen*, who tried the suit in the first instance, if he thought that the document in question was a forgery, and that the party who filed it knew it to be so, should have sent the case to the judge who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as it would be in a suit instituted and pending before himself.*

August 27, 1830.

No. 571.

1813
Reg VI Sec. 3.
1824
Reg. XV.

No. 572.

Power of a judge
to take cognizance of
forgery, arising out
of a case tried by a
Sudder Ameen

* See Circular Orders N. A. No. 14, page 18, vol. II. relating to the analogy between cases of perjury and forgery.

No. 573.

1816
Reg. XVII. Sec. 7.
Cl. 5.*To the Commissioner of Circuit for the 17th Division, dated the 17th September, 1830.*

In reply to your letter of the 7th instant, requesting to be informed, whether you are competent to take cognizance of appeals preferred by subordinate police officers dismissed from office, I am directed to inform you that the construction of clause 5, Section 7, Regulation XVII. 1816, issued in the Court's circular order of the 8th April, 1818, (No. 197, page 168, volume 1st, Baptist Mission Press Edition,) does not bar the cognizance of an appeal from a conviction of a specific offence.

September 17, 1830.

No. 574.

1812
Reg. V.*To the Judge of Zillah Mudnapore, dated the 17th September, 1830.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, requesting the Court's opinion on certain points relative to the recovery of private rents by distraint of the property of the defaulter, and by summary suits.

2. In reply, I am directed by the Court to observe, that under the law as it now stands, a *zumeendar*, *talookdar*, farmer, or other landholder may distrain the property of his *ryots* and under-tenants; and the *moonsiffs* must proceed, in conformity to the rules prescribed, to the sale of the property distrained, although the distrainer do not produce a *kaboolyut* executed by the alleged defaulter. The right to distrain is vested in the landholder with a view to facilitate the realization of his rents, and he cannot be deprived of it by a rule, which a judge, or other functionary, may take upon himself to enact. If he distrain unjustly, he does so at his own risk, and the tenant or *ryot* may immediately apply for redress to the established courts of justice.

3. The Court further observe, that a *zumeendar*, *talookdar*, farmer, or other landholder, who, in a summary suit, can shew by his village accounts, (proved to be kept in a regular form and to be true accounts,) or by any other probably true evidence, that the arrear demanded by him is due by the defendant, he is entitled, under the existing law, to a decree for the amount of the arrear, although he may not have granted a *pottah* to the defendant, or have received a *kaboolyut* from him.

4. Under this view of the case, the Court desire that you will recall the notification mentioned in the third paragraph of your letter, and that part of the orders issued to the *moonsiffs* noticed in the fourth paragraph, which directs them not to sell distrained property unless a distrainer produce a *kaboolyut*. The mode of proceeding to be adopted, when two parties claim an arrear from the same *ryot*, being clearly defined in the circular order of 3rd June 1813, (No. 36, page 25, part 1st, of volume I. Cir. Ord. S. D. A. Baptist Mission Press Edition,) the Court desire, that you will communicate them to your *moonsiffs*, for their information and guidance.

September 17, 1830.

No. 575.

1793
Reg. IV. Sec. 8
1799
Reg. VII.
1830.
Reg. VI. Sec. 2.*To the Judge of Zillah Hooghly, dated the 24th September, 1830.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 10th instant, requesting the Court's opinion as to whether the terms of Section 2, Regulation VI. 1830, preclude the issue of a *dustuc* for the arrest of a defaulter, under Regulation VII. 1799, until subsistence money for thirty days shall have been paid into the *nazir's* hands.

2. In reply, I am directed by the Court to observe, that the object of the Regulation in question being to modify the provisions of Section 8, Regulation IV. 1793, so as to prevent debtors confined in jails suffering additional hardships from the failure of their creditors to furnish them with subsistence, the terms of the section quoted by you cannot be considered as barring the issue of a *dustuc* against a defaulter, under Regulation VII. 1799; though no defaulter can be committed to jail, until the subsistence money for thirty days has been deposited.*

September 24, 1830.

To the Judge of Zillah Beerbhoom, dated the 1st October, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 4th August last, requesting the Court's instructions on certain points connected with the provisions of clause 1, Section 30, Regulation II. 1819.

2. In reply, I am directed to inform you, that the Court, understanding your first question to have reference to cases in which Government would not be entitled to any revenue from the land, if resumed, are of opinion, that the petition of plaintiff should be written on stamp paper of the value prescribed for rent-free lands, whether the claim be by an individual against a *zemeendar* to hold land on a rent-free tenure, or by a *zemeendar* to resume land held on an illegal rent-free tenure.

3. In reply to your second query, in the case of a *zemeendar* suing to resume lands held on a rent-free tenure, the only question for the Court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, in the event of the suit being decided in favor of the plaintiff, should merely declare the land liable to assessment.

October 1, 1830.

To the Judge of Zillah Behar, dated the 5th November, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 19th ultimo, requesting the Court's construction of that part of Schedule B. Regulation X. of 1829, which relates to the mode of estimating the value of stamp paper required in suing for *malgoozaree* estates.

2. In reply to your first query, I am directed to state, that if the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed *mowzehs* or *mehals*, in one and the same action, laying his plaint at the aggregate value of the whole sued for.

3. The above reply renders it unnecessary to answer your second query; and in reply to the third, I am directed to state, that the penalty of nonsuit, provided in the concluding part of article 8, Schedule B. Regulation X. 1829, is applicable to all suits in which the conditions contained in the said provision have not been complied with.

November 5, 1830.

No. 576.
1819
Reg. II. Sec. 30,
Cl. 1.

No. 577.
1829.
Reg. X.
Sch. B. Art. 8

* The letter was circulated for general information. See Cir. Ord. S. D. A. 14th June, 1831, No. 6, p. 25, vol. II. B. M. P. Ed.

No. 578.

1809.
Reg. VIII Sec. 5.*To the Commissioner for the 10th Division, dated the 12th November, 1830.*

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of a letter from you, dated 22d September last, requesting the Court's opinion as to the legality of the temporary appointment of a person to officiate in the room of a native officer of a magistrate's court; such appointment not being immediately reported to the court of circuit, as required by the concluding sentence of clause 2, Section 5, Regulation VIII. of 1809: and in reply to refer you to the Court's circular orders on this subject, dated the 8th April, 1818, and 1st January, 1830, (No. 197, page 168, volume I. and No. 12, page 11, volume II. of the Baptist Mission Press Edition.)

November 12, 1830.

No. 579.

1824
Reg. XV.*To the Civil and Criminal Courts, dated the 17th December, 1830.*

I am directed by the Court of Nizamut Adawlut to transmit to you for your information and guidance, the following observations explanatory of their construction of Regulation XV. 1824, contained in Mr. Macnaghten's letter to the Patna provincial court, dated 13th July, 1827,* circulated for general information on the 28th August, 1829, (No. 37 of part 1st, volume II. page 46, Baptist Mission Press Edition.)

2. In that construction it is declared, that the provisions of Regulation XV. 1824, "were never intended to apply to mere *hashtkars* or cultivators of the soil, or in other words, to persons having no property in the soil, but merely disputing about the right to cultivate." This construction excludes from the operation of the regulation not only disputes between the *zemeendars* and their *ryots*, but also between *zemeendars* and their farmers; and in fact, between all parties not having each a permanent interest in the land, or other property, of which the possession is disputed; and was adopted by the Court on the following considerations.

3. Regulations VII. 1799, V. 1812, and subsequent enactments vest *zemeendars* and other landholders with the right, (under responsibility to the civil courts for its legal and just exercise,) to attach (*i. e.* to take temporary possession of) the lands occupied by their *ryots*, *talookdars*, and farmers, for default in the payment of their rent, and to oust them altogether from their tenures at the expiration of the term of their *pottaks*, if they refuse to execute new engagements. Those enactments have not been rescinded, and so long as they shall continue in force, the claims of *ryots*, *talookdars*, or farmers to be restored to the management of lands from which they have been ousted by their landlords cannot be decided on a bare ascertainment of the fact of possession; and cannot therefore be cognizable by a magistrate under Regulation XV. 1824.

4. On the same principle, a dispute between *ryots*, each claiming to cultivate the same field, or between persons each claiming to be lessee, or farmer of the same village in one and the same estate, cannot be decided by a magistrate in conformity with the rules of the regulation referred to: because it belongs to the landlord or person entitled to the rent of the field or village in dispute to let it to whom he thinks proper, subject of course to a civil prosecution by the party who may consider himself wronged.

* See No. 458, page 191.

5. Neither, consistently with justice to proprietors, can the provisions of Regulation XV. 1824, be held applicable to disputes between farmers of different estates, each claiming land as belonging to the estate of the proprietor from whom he obtained his lease. If the Regulation were construed to extend to such disputes, a proprietor could not let his lands in farm, without subjecting himself to the risk of losing possession of a part of his property by a summary decision, obtained, either through the collusion of his lessee with an adverse proprietor, or from his lessee's ignorance of the proofs adducible in support of his right, which decision it would take years of expensive and vexatious litigation to get reversed.

6. It is to be observed, that, by the above construction, cases of dispute between two farmers and two *ryots* of different estates, each claiming the same portion of lands, as belonging to the estate of his landlord, and included in his farm, are not necessarily excluded from the cognizance of the magistrate; as, in such cases, the proprietors of the two estates may be made parties in the dispute, along with the contending farmers and *ryots*, and the *perwannahs*, prescribed in section 3 of the regulation referred to, issued to the former as well as the latter.

7. It is also to be observed, that as *putneedars*, *mocurrurreedars*, and *lakherajdars* have a transferable proprietary right in their tenures, the above construction does not exclude from the operation of the regulation any cases of dispute between these descriptions of landholders, which relate merely to the boundaries or the possession of the tenures, and do not involve any question regarding the performance of the conditions, or the validity of the title under which they are held. But in such cases, with a view to prevent injurious interference on the part of the magistrates with the rights of the *zemeendars* of estates in which they may occur, it is considered proper that *perwannahs*, allowing the *zemeendars* the option of attending as parties during the investigation of the cases, should be issued to them, at the same time that the *perwannahs* prescribed in section 3 of the regulation are issued to the other parties.

December 17, 1830.

To the Judge of Zillah Burdwan, dated the 24th December, 1830.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 14th instant, requesting the Court's construction of certain points connected with the sale of *putnee talooks* by public auction, under Section 9, Regulation VIII. of 1829.

2. The Court are of opinion, that if the auction purchaser do not pay the balance of the purchase-money by noon of the eighth day from the day of sale, he forfeits by his failure the fifteen per cent. deposited by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency; and that the forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter. Should this last be sufficient to cover the balance claimed by the *zemeendar*, no further sale need take place; otherwise (if the balance be not previously paid by the defaulter) the *talook* must be re-sold on the ninth day, and any surplus of the forfeited

No. 580.
1819
Reg. VIII. Sec. 9.

percentage and of the proceeds of the second sale, after liquidating the *zameendar's* demand, must be paid to the defaulting *talookdar*.

December 24, 1830.

No. 581.

Appeal from summary decision admissible, if the provisions of the regulations have not been complied with.

To the Provincial Court of Appeal, Dacca, dated the 31st December, 1830.

In reply to your letter of the 11th instant, submitting, at the request of the judge of Tipperah, a reference as to the competency of a provincial court of appeal to revise an order passed by a *zillah* judge in a summary suit instituted under Regulation V. 1812, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that as the order of the *zillah* judge appears to have been contrary to the provisions of the regulation quoted, it was clearly competent to you to direct him to conform thereto.

December 31, 1830.

No. 582.

1819
Reg. VII. Sec 6.

To the Commissioner of Circuit of the 4th Division, dated the 7th January, 1831.

In reply to your letter of the 1st ultimo, requesting the Court's opinion on two questions, involving a construction of Section 6, Regulation VII. 1819, I am directed by the Court of Nizamut Adawlut to communicate the following replies.

2. *Question 1st.* Whether Regulation VII. 1819, so far as relates to the recovery of wages, should not be considered strictly a summary regulation, and only applicable to cases in which the cause of action may have arisen within the year in which the complaint is preferred?

The intention of the regulation evidently is, that the complaint should be made immediately on the occurrence of the cause of complaint; the Court therefore are of opinion that the case alluded to in your letter, in which nearly two years and an half had elapsed, was not one properly cognizable under the regulation.

3. *Question 2nd.* Whether complainants for arrears, under Regulation VII. 1819, should be compelled to swear to the truth of their complaints, or whether they should not be considered in the light of plaintiffs in civil suits, and not examined on oath except by the consent of both parties?

The Court are of opinion that the complaint, like all other complaints in a criminal court, must be preferred on oath.

January 7, 1831.

No. 583.

1829
Reg. X
Sch. B. Art. 8.

To the Commissioner of Appeal for the 16th Division, dated the 7th January, 1831.

The Court of Sudder Dewanny Adawlut having had before them your letter of the 30th November last, and its enclosures, relating to the construction of article 8, Schedule B. Regulation X. 1829; direct me to state, that the article quoted relates merely to the stamp paper leviable, in lieu of the former institution fee, on petitions of plaint and appeal in regular original suits and appeals and special appeals; and that petitions in summary suits are to be taxed as petitions under article 7, Schedule B. The Court therefore desire, that you will direct the judge of Chittagong to recall the proclamation, issued in conformity with his *roobucaree* of the 20th March last, and to give publicity to this construction of the point in question.

January 7, 1831.

To the Provincial Zillah and City Courts, dated the 25th February, 1831.

Several instances having occurred, in which it has been found necessary to quash the proceedings of the lower courts in suits involving the question of the validity of titles to hold land exempt from the payment of revenue, in consequence of their having been tried and determined without a previous reference to the collectors, as expressly required by Section 30, Regulation II. 1819, the Court desire, that you will immediately inspect the suits pending on your own file and on the files of your registers and *sudder ameens*, and transfer for report to the collector all suits of the nature above stated, which have not already been referred and reported on.

February 25, 1831.

No. 584.

1819

Reg. II. Sec. 30.

To the Magistrate of Zillah Etawah, dated the 25th March, 1831.

In reply to your letter of the 10th instant, requesting to be informed the precise meaning of the word "declaration," in the 2nd clause of Section 16, Regulation XX. 1817, I am directed by the Court of Nizamut Adawlut to inform you, that it means *Izhar*, and not an *Ikrarnameh*, as erroneously translated in the regulation.

March 25, 1831.

No. 585.

1817.

Reg. XX. Sec. 16.

To the Provincial Court of Appeal, Dacca, dated the 8th April, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 28th ultimo, requesting to be informed, whether in the opinion of the Court you are authorized, under the provision of Section 8, Regulation II. 1821, to attach houses in the city of Dacca, in execution of a decree passed by you in an original suit for arrears of rent due from land in the *zillah* of Backergunge.

2. The Court observe, that the wording of the section quoted by you is not quite clear, but adverting to the object of the provision, as stated in the preamble of the Regulation; viz. to afford relief to the judges of the *zillah* and city courts within the local limits of the jurisdiction of which the provincial courts may be situated, they are of opinion, that you are authorized under that section to attach, through your own officers, land or other amenable property, situated within the city of Dacca, in execution of the decree alluded to.

April 8, 1831.

No. 586.

1821.

Reg. II. Sec 8.

To the Provincial Court of Appeal, Dacca, dated the 8th April, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 23rd ultimo and its enclosures, relating to a claim preferred by the *nazir* of the civil court of Backergunge to a commission on the proceeds of sales conducted by him: and to inform you, in reply, that the Court are of opinion, that *nazirs* are not entitled under the existing regulations to the fee of one anna per rupee on the proceeds of sales conducted by them in execution of decrees, allowed to *moonsiffs* for performing such duties, by Section 52, Regulation XXIII. 1814.

April 8, 1831.

No. 587.

1814

Reg. XXIII.
Sec. 52.

No. 588.

1806
Reg. II. Sec. 5.*To the Commissioner of Appeal of the 16th Division, dated the 8th April, 1831.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 28th ultimo and its enclosures, requesting the Court's opinion as to how far the goods of an European are liable to be attached, on a plaintiff's making oath that the said European is about to alienate them.

2. In reply, I am directed to inform you, that the property of an European defendant is liable to attachment in suit legally instituted, in like manner as the property of any other person subject to the jurisdiction of the court, upon the court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond and withdraw himself, or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.

3. I am further directed to observe, that the attachment of the property of the defendant, in the case noticed in the letter from the judge of Chittagong, on the mere oath of the plaintiff, appears to have been premature, and the process of attachment, as exhibited in the judge's letter, at variance with the provisions of clause 2, Section 5, Regulation II. 1806.

4. With reference to the question contained in your second paragraph, I am directed to state, that until the proclamation of attachment has been issued in conformity with the above rule, the defendant may legally alienate his property.

April 8, 1831.

No. 589.

1819
Reg. II. Sec. 30,
Cl. I.*To the Provincial Court of Appeal, Calcutta, dated the 8th April, 1831.*

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 3rd ultimo, submitting a reference from the judge of Hooghly, objecting to the reversal by your court of an order passed by him, rejecting a prayer for a special appeal.

2. In reply, I am directed to observe, that clause 1, Section 30, Regulation II. of 1819, expressly directs, that "all suits preferred in a court of judicature by proprietors, "farmers, or *talwholders*, to the revenue of any land held free of assessment, as well as all "suits preferred by individuals claiming to hold lands exempt from revenue, shall immediately on their institution, be referred for investigation to the collector." The judge of Hooghly therefore should not have referred the case in question to the *sudder ameen*. In clause 6 of the same section, it is provided, that "the collector, on closing his proceedings, shall transmit them, with all the documents therein referred to, to the court "by which the reference was made, and the court shall decide the case." As the *sudder ameen* could not, and did not, refer the case to the collector, he was not, under the provision quoted, authorized to try it after it was reported on by the collector.

3. Under this view of the subject, the Court approve of the order passed by you, directing the judge to admit the special appeal, and try the case himself, and request that you will communicate this opinion to him for his information and future guidance.

April 8, 1831.

To the Commissioner of Circuit for the 15th Division, dated the 8th April, 1831.

No. 590.

In reply to your letter of the 18th ultimo, I am directed by the Court of Nizamut Adawlut to inform you, that the payment of actual costs awarded by a magistrate, under the provisions of Section 8, Regulation XIV. 1797, are to be enforced by the attachment and sale of the property of the party against whom they are awarded.

Reg. XIV. Sec. 8.
1797

April 8, 1831.

To the Provincial Court of Appeal, Dacca, dated the 15th April, 1831.

No. 591.

1814.
Reg. XXV.
Sec. 8.

In reply to your letter of the 7th ultimo, I am directed by the Court of Sudder Dewanny Adawlut to inform you, that the Court are of opinion, that a single judge of a provincial court is competent to direct a *zillah* or city judge to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, until a decision shall have been passed on the appeal.

April 15, 1831.

To the Judge of Zillah Tipperah, dated the 6th May, 1831.

No. 592.

1829.
Reg. X Sec 3,
and Sch. A,

In reply to your letter of the 7th ultimo, requesting the opinion of the Court of Sudder Dewanny Adawlut whether, with reference to Section 3, Regulation X. 1829, and Schedule A. therein alluded to, account books kept by merchants and shop-keepers for money paid or received, or for goods delivered, &c. &c. and not written on stamp paper, are to be admitted or not as evidence in a court of justice; I am directed to inform you, that there being no regulation which requires account books to be written on stamp paper, the court are of opinion, that they should be considered admissible as evidence, although written on unstamped paper.

May 6, 1831.

To the Benares Provincial Court of Appeal, dated the 6th May, 1831.

No. 593.

1814.
Reg. XXVII.
Sec. 16.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 7th ultimo, submitting your opinion on the subject of the competency of the judge of the city court of Benares, to make a distribution of the *vakeels* employed in the courts of the *sudder ameens*.

2. In reply, I am directed to inform you, that the Court are of opinion that the judge is fully competent, under the provisions of Section 16, Regulation XXVII. 1814, to make such allotment and distribution of the pleaders attached to the courts of *sudder ameens* as may appear to him proper, and accordingly request that you recall the orders issued by you to the city judge on this subject.

May 6, 1831.

To the Commissioner of Circuit of the 15th Division, dated the 20th May, 1831.

No. 594.

1828
Reg. VIII.

In reply to your letter of the 14th ultimo, transmitting copies of correspondence with the magistrate of Mymensingh, relative to the power of a magistrate to try, under Regulation VIII. 1828, cases of affray which occurred previously to the enactment of that Regulation; I am directed to inform you, that in the opinion of the Court the magistrate

was competent to try the prisoner in question under the law referred to, although before its enactment some of the persons implicated in the same affray were tried by the court of circuit. Under these circumstances, the Court request that, in the event of your not having already tried the prisoners, you will be pleased to recall your order for the commitment of the prisoners, and direct the magistrate to carry into execution the sentence which he passed upon them.

May 20, 1831.

No. 595.

1807.
Reg. IX. Sec. 20.
1821
Reg. III, Sec. 2.

*To the Officiating Commissioner of Circuit for the 2nd Division, dated the
17th June, 1831.*

In reply to your letter of the 26th ultimo, I am directed by the Court of Nizamut Adawlut to state, for the information of the acting magistrate of Agra, that the Court are of opinion that an assistant to a magistrate is not competent to take cognizance of complaints against European British subjects to the extent specified in cap. 53, Geo. 3rd, Section 105, and that the powers in question can only be exercised by a person possessing the full power of a magistrate.

June 17, 1831.

No. 596.

1800.
Reg. I.

To the Provincial Court of Appeal, Dacca, dated the 24th June, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's construction of Regulation I. 1800, as relates to the power of the provincial courts of appeal to receive appeal from orders passed under that regulation by the *zillah* and city courts; and in reply to acquaint you, that the Court are of opinion, that the provincial courts of appeal have no jurisdiction in the cases provided for by the regulation in question; but that the parties dissatisfied with the orders of the *zillah* and city judges must appeal to this Court. You will not of course consider this opinion as declaring that an appeal against a decision in a regular suit instituted against a guardian appointed under Regulation I. 1800, shall not be cognizable by a provincial court of appeal.

June 24, 1831.

No. 597.

1819.
Reg. VIII.
Sects. 8 and 9.

To the Judge of Zillah Burdwan, dated the 29th July, 1831.

In reply to the question contained in your letter of the 8th instant, viz. in what district the sale of a *putnee talook* is to take place, under the provisions of Regulation VIII. 1819, when the revenue of the estate of which it forms a part is payable to the collector of one district, and the estate situate, as far as the jurisdiction of the civil court is concerned, in another; I am directed to state that the Court incline to the opinion that the sale should be conducted by the register of the civil court within the jurisdiction of which the land is situate: but that a special appeal having lately been admitted on this question (among others), the Court decline giving a decided opinion on the question: it will be more fully considered when that case is brought to a hearing.

July 29, 1831.

*Extract of a letter to the Commissioner of Circuit of the 4th Division, under date the
29th July, 1831.*

PAR. 5. It may be remarked in this place, that the *darogha*, on receiving intelligence of the intended *suttee*, did not conform to the rule prescribed in the second clause of Section 3, Regulation XVII. of 1829, and that when he arrived at the village, after the *suttee* had been burnt, he acted unjustifiably, in ordering two of the inhabitants to be taken into custody before he had made any inquiry to ascertain who had aided in the performance of the sacrifice, instead of merely making the inquiry and reporting the result to the magistrate, as directed in the third clause of the section above cited.

July 29, 1831.

No. 598.
1829
Reg XVII Sec. 3,
Cl 2

To the Judge of Zillah Shahabad, dated the 12th August, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 29th ultimo, requesting the opinion of the Court (in consequence of the collector of your district having objected to try such suits), whether the rent of lands held free of assessment can be realized by summary prosecutions.

2. In reply, I am directed to inform you, that the regulations in force, which relate to arrears and exactions of rent, apply equally to claims arising from rent-free land and from land paying revenue to Government, and that summary suits instituted under the above provisions are referable to collectors, whether the land be rent-free or otherwise.

August 12, 1831.

No. 599.
1799
Reg VII.
1812
Reg. V.

To the Commissioner of Circuit of the 7th Division, dated the 23d September, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 13th instant, requesting to be informed, whether you are at liberty to employ the *moulogee* of the late *zillah* court of the northern division of Bundecund as law officer at the ensuing sessions for Humeerpoor; and also whether, in cases in which the prosecution may be conducted on the part of Government, it is necessary that the Government pleader at the Banda or Bundecund civil court should attend during the sessions at Humeerpoor.

2. In reply, I am directed to inform you, that you are competent, under the provisions of Regulation IV. 1830, to nominate the *moulogee* of the late civil court to officiate as law officer at the ensuing sessions for Humeerpoor; and that the magistrate of the district is at liberty to direct any person, whom he may think fit, to officiate as government pleader for conducting the prosecutions on the part of Government.

September 23, 1831.

No. 600.
1830
Reg IV
Appointment of a
public prosecutor, in
the absence of the
vakeel of the Govern-
ment.

To the Commissioner of Revenue of the 11th Division, dated the 30th September, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, submitting a question proposed by the collector of Behar, relative to the course to be pursued in serving notices of sales of lands by collectors, in satisfaction of decrees of court.

No. 601.
1793.
Reg XLV.
1825.
Reg. VII. Sec. 3.

2. The rules contained in Section 3, Regulation VII 1825, are applicable, as stated by the collector, to sales conducted by the officers of the civil court; the collector however appears to have overlooked the provisions of Section 12, Regulation XLV. 1793; which the Court consider to be still in force, and applicable to sales by collectors in cases not coming within the third clause of Section 3, Regulation VII. 1825.

3. You are requested to make the necessary communication to the collector, and in the event of his having any further doubts on the subject, the Court, on their being specifically stated, will give them all due attention.

September 30, 1831.

No. 602.

1818
Reg. V
See 5 Cl 2,
1814
Reg. XXVII.
Sec. 16.

To the Commissioner of Appeal, Cuttack, dated the 14th October, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 17th ultimo, requesting the Court's opinion as to your competency to refuse to admit the *vakeels* of the *zillah* court of Cuttack to conduct suits in your court as *mokhtars*, under the provisions of clause 2, Section 5, Regulation V 1818.

2. In reply, I am directed to inform you, that the Court are of opinion, that the practice of allowing the pleaders of the *zillah* court to conduct suits as *mokhtars* in your court is objectionable, for the reasons stated by you,* as well as because it is at variance with Section 16, Regulation XXVII. 1814, which provides, that the *vakeels* of one court shall not be allowed to plead in any other court; and that you are therefore competent to decline receiving *mokhtarnamahs* authorizing them to conduct suits in your court.

October 14, 1831.

No. 603.

1821.
Reg. IV Sec. 8.
1824
Reg. XIV.
1819.
Reg. II.
1807
Reg. IX.
1821.
Reg. III.

To the Judge of Zillah Shahabad, dated the 21st October, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 26th ultimo, requesting the Court's opinion, as to the competency of a collector to refer to his assistants summary suits referred to him by the civil court.

2. In reply, I am directed to inform you, that the Court are of opinion, that the third clause of Section 8, Regulation IV. of 1821, authorizes a collector to delegate to his assistant only his fiscal duties; and that it has no reference to the judicial duties delegated to a collector by a judge, either under Regulation XIV. 1824, Regulation II. 1819, or any other regulation; nor to the duties of magistrates vested in a collector, the delegation of which latter to an assistant would, in some cases, be contrary to the provisions of Regulation IX. 1807, Regulation III. 1821, and Regulation I. 1822.

October 21, 1831.

* The reasons assigned were, the interruption it occasioned in the business of the commissioner's court, from the necessary attendance of the *vakeel*, in the *zillah* court; and the temptation it gave the *vakeels* of the judge's court to instigate appeals to the commissioner.

To the Officiating Commissioner of Circuit of the 14th Division, dated the 11th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 5th ultimo, requesting the Court's opinion as to the manner in which certain articles purchased, or supposed to be purchased, with money stolen from the prosecutor are to be disposed of.

2. In reply, I am directed to inform, that the Court are not aware of any regulation which prohibits the delivery to the prosecutor of any articles, which may be proved to your satisfaction to belong to him, or to have been purchased with his money; and to request, that you will accordingly exercise your discretion in the disposal of the property in question.

November 11, 1831.

To the Officiating Commissioner of Circuit of the 3rd Division, dated the 11th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 19th ultimo, submitting copies of correspondence, on certain points relating to persons admitted to bail, when committed for trial before a court of circuit.

2. In reply, I am directed to communicate to you the opinion of the Court, that the bail bond, in such cases, is in force until the trial be finally concluded, which it is not until sentence is passed; and that no person on bail should be committed to jail, until a final sentence involving imprisonment have been passed upon him.

3. The Court direct me to add, that the present reference does not appear to involve a question as to the general power of a commissioner of circuit of deciding on the propriety of the order of a magistrate for admitting persons accused of crimes to bail.

November 11, 1831.

Extract from letter to the Deputy Secretary to Government, in the Judicial Department, dated 11th November, 1831.

PAR. 9. The majority of the Court do not consider any interference on the part of Government called for, to put a stop to the evils alleged by the commissioner to arise from the present system of *ghaut mangees*. The *ghaut mangees* are in fact agents for hiring boats, and of course are entitled to make a charge for their trouble. Their services are doubtless useful to the community, and to prohibit their being employed, the Court think would be an unwise measure. The evils complained of by the commissioner may be put a stop to by the magistrates granting speedy redress to every one injured by the mal-practices alluded to.*

November 11, 1831.

No. 604.

Property purchased with stolen money to be given to the owner of the money.

No. 605.

1793
Reg IX Sec 5.
1803
Reg. VI. Sec 5.

No. 606.

Exactions by Ghaut Manjees.

* The reply of Government to the above reference was as follows

"With respect to the *ghaut mangees*, the local authorities must steadily refuse to recognize the claims of the *ghaut mangees*, and ought promptly to punish every attempt illegally to enforce those claims, and

No. 607.

To the Joint Magistrate of Bogoora, dated the 18th November, 1831.

Power of courts to
refuse to acknow-
ledge a *mokhtar* prov-
ed guilty of gross
misconduct.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 31st ultimo, and in reply, to inform you, that the Court have determined that a magistrate is competent to refuse to acknowledge a *mokhtar* in his court, who may be proved guilty of any gross misconduct in the execution of his duty in that capacity.

November 18, 1831.

No. 608.

¹⁸¹⁶
Reg. XXII.
^{1817.}
Reg. XX. Sec. 21

To the Commissioner of Circuit of the 13th Division, dated the 18th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 30th ultimo, and its enclosure from the magistrate of Rungpoor, and in reply to inform you, that the Court's circular order of the 22d July last* was intended to prevent the improper extension of the provisions of Regulation XXII. 1816, to places not contemplated in that regulation, and not to interfere with the establishments of *chokeydars*, which the *zameendars* are bound by the provisions of Section 21, Regulation XX. 1817, to support.

November 18, 1831.

No. 609.

Summary orders of
the Nizamut Adaw-
lut are not binding on
the civil courts.

To the Provincial Court of Appeal, Dacca, dated the 18th November, 1831.

I am directed by the Courts of Sudder Dewanny and Nizamut Adawlut to acknowledge the receipt of your letter of the 10th September last, forwarding a letter from Mr. Richardson, judge and magistrate of the city of Dacca, and copies of certain Persian proceedings, relating to the powers of a provincial court to interfere with orders issued by the Nizamut Adawlut to a magistrate through the commissioner of circuit.

2. The Court observe, that in consequence of the original interference of the late magistrate, in the case which gave rise to the reference, having been considered illegal, the Nizamut Adawlut annulled the proceedings of the magistrate and court of circuit, and ordered the restoration of the property to the state in which it was before the interference of the criminal courts. This interference having been withdrawn, the orders of the Nizamut Adawlut were fully executed, and the magistrate had no right, nor occasion, again to interfere in the matter. On the application of one of the parties to the civil court, to cause execution of the award of the arbitrator, Mr. Richardson was not authorized to refer the case from the civil to the criminal court. It was his duty, as civil judge, to decide whether the award of the arbitrators should be executed or not, without regarding the order of the Nizamut Adawlut, which could not affect orders

"especially the detention of boats without the consent of the owners, or other acts founded on pretended authority. Beyond this, the suppression of the custom must be left to the mutual interests of the parties concerned in hiring and letting out boats."—Extract par. 8, from a letter from the Deputy Secretary to Govt. dated the 3rd January, 1832.

* See Cir. Ord. Nizamut Adawlut, No. 87, page 98, Vol. II. B. M. P. E.

passed by him in the civil court; and the provincial court was also competent, on an appeal being duly preferred to them from the orders of the judge, to pass such orders thereon as the nature of the case might in their judgment require.

November 18, 1831.

To the Commissioner of Circuit of the 13th Division, dated the 25th November, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter and its enclosures of the 5th instant, requesting the Court to favor you with their construction of Section 19, Regulation IX. 1807 and Section 5, Regulation VII. 1811.

2. In reply, I am directed to observe, that magistrates are authorized by the provisions quoted to punish litigious or groundless complaints by imprisonment not exceeding six months. This power should be exercised by the magistrates with the utmost discretion, and the commissioners of circuit, under the general powers vested in them, can receive appeals from the magistrate's decision, and pass such orders thereon as they may think just and proper.

November 25, 1831.

To the Judge of Zillah Behar, dated the 25th November, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 17th instant, requesting to be informed, whether persons charged with *perjury* before a register of deeds should be committed by the *zillah* judges, or prosecuted before the magistrate by the register of deeds.

2. The Court, considering the registry of deeds to be a "civil proceeding," contemplated by clause 2, Section 14, Regulation XVII. 1817, are of opinion, that in cases of *perjury* before the register of deeds, the judge and register should proceed in conformity with the provisions of that clause.

3. With reference to the 5th paragraph of your letter, the Court direct me to inform you, that a civil surgeon comes within the class of covenanted servants of the company; who, by Sections 3 and 4, Regulation IV. 1824, are authorized to officiate as register of deeds.

November 25, 1831.

Extract from a letter to the Commissioner of Circuit for the 7th Division, dated the 25th November, 1831.

PAR. 3. With reference to the instructions communicated to the magistrate, the Court observe, that they sanction the magistrate devolving on his assistant power to do acts which he does not possess under the provisions of Section 21, Regulation IX. 1807, that is, of deciding finally on cases of aheinous nature, provided his opinion be in favor of the prisoner. In cases which the magistrate may refer to his assistant for trial and decision, the latter may convict or acquit, according to his judgment. In cases, however, referred merely for report, he has no power to release prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. The Court

No. 610.

1807
Reg. IX Sec 19
1811.
Reg VII. Sec. 5.

No. 611.

1817.
Reg XVII Sec. 14.
1824.
Reg IV.
Secs. 3 and 4.

No. 612.

1807
Reg. IX. Sec. 21.

request, that you will recall your former instructions, and communicate this paragraph to the magistrate, for his information and future guidance.

November 25, 1831.

No. 613.

Reg. XXVI.
Sec. 3
1814
Reg. XIX
Sects 7 and 8
1817

Resolution of the Court of Sudder Dewanny Adawlut, dated the 25th November, 1831.

On a consideration of the provisions of Section 3, Regulation XXVI. 1814, and Sections 7 and 8, Regulation XIX. 1817, the Court are of opinion, that in cases in which a summary appeal is admissible, under the section first mentioned, such appeal may be admitted, although the appellant may erroneously, or from other cause, have applied for the admission of a special appeal on stamp paper of the prescribed value; and that, in such cases, the stamp duty paid by the appellant on his petition shall, with the exception of two rupees, the value of the proper stamp for a petition of summary appeal be returned to him.

November 25, 1831.

No. 614.

Reg. VIII. Sec. 9.
1819.
1831.
Reg. VIII.

To the Judge of Zillah Jungle Mehals, dated the 16th December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter, without date, received on the 8th instant, requesting the Court's opinion on certain points relative to the sale of *putnee talooks*, under Regulation VIII. of 1819.

2. In reply, I am directed to inform you, that the duty of holding sales of *putnee* and *durputnee talooks* is vested by Section 9, Regulation VIII. of 1819, in the judge and magistrate, in the absence of the register; but that all summary investigations, relating to the rent demanded by the *zemeendar*, must be conducted by the collector, under the provisions of Regulation VIII. of 1831.

December 16, 1831.

No. 615.

Reg. VIII.
1831

To the Acting Judge of Purnea, dated the 23rd December, 1831.

I am directed by the Court of Sudder Dewanny Adawlut to acknowledge the receipt of your letter of the 5th instant, and its enclosure from the collector of your district, requesting the Court's opinion as to the competency of a collector to take cognizance of resistance to the attachment of property distrained for arrears of rent, under Sections 19 and 20, Regulation XVII. 1793, and Section 9, Regulation VII. 1799.

2. In reply, I am directed to observe, that the Court, on the 9th August, 1806,* construed the sections above quoted as providing that investigations made under these rules should be tried as *summary suits*: and that, as the whole of the jurisdiction in cases of summary suits for arrears of rent, formerly vested in the civil courts, has been, by the provisions of Regulation VIII. 1831, transferred to the collectors of revenue, the Court are of opinion, particularly with reference to the provisions of section 4 of that regulation, that the collector is competent to try all cases of resistance of his process of attachment connected with such summary suits, except when actual breaches of the peace may occur, in which event the case must be tried by the magistrate.

December 23, 1831.

* See No. 23, page 7.

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To the Magistrate of Zillah Mymensingh, dated the 30th December, 1831.

I am directed by the Court of Nizamut Adawlut to acknowledge the receipt of your letter of the 2nd instant and its enclosures, and in reply, to inform you that the Court do not consider a magistrate competent to make a person repay, or restore money, or other property, obtained by false pretence or extortion, the said money or property not having come into the hands of the Court ; nor to compel the offender to execute a *mochul-ku*, binding himself in a penalty to repay or restore the same.

December 30, 1831.

No. 616.

1793
Reg IX Sec 4.
1803
Reg. VI. Sec. 4.

To the Magistrate of Zillah Mirzapore, dated the 30th December, 1831.

In reply to your letter of the 9th instant, I am directed by the Court of Nizamut Adawlut to inform you, that a magistrate is authorized to release the accused, if he consider a homicide to have been accidental, or justifiable under the Mahomedan law ; and that if he be doubtful as to the law, he should apply to his law officer for assistance.

December 30, 1831.

No. 617.

1807.
Reg IX. Sec. 9,
Cl. 1.